

TITLE I.

CITY GOVERNMENT - GENERAL PROVISIONS

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CHAPTER 1-01

THE ENACTING ORDINANCE.

SECTIONS:

- 1-0101. Title of Ordinances.
- 1-0102. Ordinances to Remain in Effect.
- 1-0103. Repeal--Exceptions.
- 1-0104. Separability Provisions.
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1-0101. TITLE OF ORDINANCES. The ordinances of the City of West Fargo shall be known as the Revised Ordinances of 1990 of the City of West Fargo, North Dakota.

1-0102. ORDINANCES TO REMAIN IN EFFECT. All previously adopted ordinances and amendments thereto, shall remain in full force and effect until repealed or amended by the governing body of the City of West Fargo.

1-0103. REPEAL--EXCEPTIONS. All ordinances of the City of West Fargo adopted prior to July 30, 1990, are hereby repealed, except the following ordinances which shall continue in full force and effect regardless of the fact that they are herein omitted.

1. All existing ordinances or any part thereof creating contract obligations on the part of the City, which obligations shall remain binding until fully performed by the parties thereto.
2. All existing ordinances establishing special improvement districts.
3. All existing ordinances levying taxes for previous years which are still unpaid or for future years under the provisions of any law relating to the issuance of municipal bonds, warrants, certificates of indebtedness, or other municipal obligations, whether general or special.
4. All salary and appropriation ordinances.
5. Any and all other ordinances adopted in said Revised Ordinances of 1990 by reference, although the same are not set forth in full therein.
6. All existing ordinances establishing, extending, or reducing the city limits of the City and all existing ordinances by which the zoning of any area has been established or modified.

7. The incorporation herein of any ordinances of the City granting franchises to individuals, associations, or corporations shall not operate to repeal the same in their original form nor to extend the term of any franchise beyond that permitted by law or fixed in the ordinances granting the same which is re-enacted herein.

1-0104. SEPARABILITY PROVISIONS. If any section, subsection, sentence, clause or phrase of these ordinances is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause, phrase, or portion thereof. The Board of City Commissioners hereby declares that it would have passed these ordinances and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

1-0105. EXISTING LICENSES OR PERMITS. All licenses and permits issued prior to the date on which this ordinance becomes effective shall continue in force for the remainder of the term for which the same were issued, without additional fees, but all licensees and permittees shall be governed by the provisions of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, for the remainder of the terms of said licenses and permits in the same manner and to the same extent as if said licenses and permits had been issued under the provisions of the Revised Ordinances of 1990.

1-0106. NEW LICENSES AND PERMITS. In the case of any license or permit not heretofore required and appearing for the first time in the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, such license or permit shall be secured on or before the first day of the first month following the effective date of this ordinance, and the first fee therefor shall be prorated for the remainder of the term thereof on a monthly basis, provided that the minimum fee for any such new license or permit shall be \$5.00.

CHAPTER 1-02

ORDINANCES

SECTIONS:

- 1-0201. Voting Record.
- 1-0202. Reconsideration or Rescinding Vote.
- 1-0203. Procedure in Passing Ordinances.
- 1-0204. Publication.
- 1-0205. Enactment and Revision of Ordinances.
- 1-0206. Effective Date.
- 1-0207. Effect of Repeal.
- 1-0208. Interpretation - Construction.
- 1-0209. Singular - Plural - Gender - Interpretation.
- 1-0210. Constitutionality - Ordinances - Construction.
- 1-0211. Penalty for Violation.

1-0201. VOTING RECORD. The yeas and nays must be taken by the governing body upon the passage of all ordinances and on all propositions to create any liability against the City or for the expenditure or appropriation of money, and, in all other cases, at the request of any member, which votes must be entered on the journal of its proceedings. A majority of all the qualified and existing members of the Commission must concur on the passage of any ordinance and in the creation of any liability against the City and for the expenditure or appropriation of money. For purposes of this section, and for all other votes required by the ordinances of the City of West Fargo or the State of North Dakota, any member of the Board of City Commissioners or Board of Adjustment who, by reason of a stated conflict of interest abstains from voting, must not be considered to be a qualified or existing member of the Board of City Commissioners or Board of Adjustment. A Member of the Board of City Commissioners who does not abstain but simply remains silent when the roll call vote is taken, shall be deemed to have voted yea, and a record of yea shall be entered in the journal. For all other matters not covered in this section and not otherwise covered by ordinance or state statute, passage of a motion or resolution shall be by a majority of existing and qualified Commission members present at a meeting at which a quorum is present.

Source: Ord. 549, Sec. 1 (1998).

1-0202. RECONSIDERATION OR RESCINDING VOTE. No vote of the governing body shall be reconsidered or rescinded at a special meeting unless, at such special meeting there is present as large a number of members as was present when such vote was taken.

1-0203. PROCEDURE IN PASSING ORDINANCES. All ordinances shall be read twice, and the second reading shall not be had in less than one (1) week after the first reading; and after such first reading, before their final passage, such ordinances may be

amended, and shall then be put upon their second reading and final passage; and, if passed by the governing body, shall be signed by the President of the governing body and attested by the City Auditor.

1-0204. PUBLICATION. The title and penalty clause of each ordinance, imposing any penalty, fine or imprisonment for its violation, after its final adoption, shall be published in one (1) issue of the official paper of the City.

1-0205. ENACTMENT AND REVISION OF ORDINANCES. The executive officer of a municipality may appoint, by and with the advice and consent of the governing body of the municipality, one or more competent persons to prepare and submit to the governing body for its adoption or rejection, an ordinance for the revision or amendment of existing ordinances or for the enactment of new and additional ordinances for such municipality. The attorney for the municipality, if it has an attorney, shall be appointed as one of the persons to prepare and submit such ordinance. The compensation of the revisor or revisors, including that of the attorney, shall be determined by the governing body and shall be paid out of the municipal treasury. Such revision, including any additional ordinances and amendments to existing ordinances contained therein, may be passed as a single ordinance and may be published in pamphlet or book form, by and under the authority of the governing body of the municipality, and shall be valid and effective without publication in a newspaper or posting, Section 1-0204 of this chapter notwithstanding.

1-0206. EFFECTIVE DATE. Ordinances adopted and requiring publication shall take effect and be in force from and after publication unless otherwise provided. Ordinances not requiring publication shall take effect and be in force from and after final approval unless otherwise provided.

1-0207. EFFECT OF REPEAL. When any ordinance repealing a former ordinance, clause or provision, shall be itself repealed, such repeal shall not be construed to revive such former ordinance, clause or provision, unless it shall be expressly so provided.

1-0208. INTERPRETATION - CONSTRUCTION. For the purpose of interpretation and construction of any ordinance, the term "person" includes, where relevant or not otherwise indicated, corporations, unincorporated associations, or other legal entities.

1-0209. SINGULAR - PLURAL - GENDER - INTERPRETATION. For the purpose of interpretation of any ordinance, where relevant or not otherwise indicated, words used in the singular include the plural, and the plural, the singular and words in the masculine gender include feminine and neuter genders.

1-0210. CONSTITUTIONALITY - ORDINANCES - CONSTRUCTION. If any section, subsection, sentence, clause or phrase of any

ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause, phrase, or portion thereof.

1-0211. PENALTY FOR VIOLATION. Any violation of an ordinance of the City of West Fargo shall be an infraction unless another penalty is specifically provided for the violation in these ordinances, or unless state law defines an offense in language similar to the ordinance as a class B misdemeanor, in which case the violation of the ordinance shall be penalized as a class B misdemeanor. An infraction may be punished by a maximum fine of \$1,000. The Municipal Judge shall have the authority to establish the penalty for each infraction which is an offense up to a maximum of \$1,000, except for offenses for which a penalty is set by State law, in which case the court must sentence in accordance with State law. Any person convicted of an infraction who has, within one year prior to the commission of the infraction of which he was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint or citation shall specify that the offense is a misdemeanor.

A class B misdemeanor may be punished by a maximum fine of \$1,500, or 30 days imprisonment, or both.

Source: Ord. 424, Sec. 1 (1991); Ord. 532, Sec. 1 (1997); Ord. 826, Sec. 1 (2008); Ord. 961, Sec. 1 (2013).

CHAPTER 1-03

BOARD OF CITY COMMISSIONERS

SECTIONS:

- 1-0301. Meetings: Regular Day Held.
- 1-0302. Meetings: Regular Time.
- 1-0303. Meetings: Special, How Called.
- 1-0304. Meetings: Special Notice.
- 1-0305. Meetings: Regular and Special and Place Held.
- 1-0306. Salaries of City Commissioners.

1-0301. MEETINGS: REGULAR DAY HELD. The Board of City Commissioners of the City of West Fargo shall meet in regular meetings on the first (1st) and third (3rd) Monday of each month.

Source: Ord. 1050, Sec. 1 (2015)

1-0302. MEETINGS: REGULAR TIME. The time of the regular meetings shall be as determined by the Board of City Commissioners by resolution.

1-0303. MEETINGS: SPECIAL, HOW CALLED. The Board of City Commissioners of the City of West Fargo may have special meetings at any time. Said special meeting may be called by the President of the Board of City Commissioners or by any two (2) members of the Board of City Commissioners.

1-0304. MEETINGS: SPECIAL NOTICE. Written notice of any special meeting shall be given to each member of the Board.

1-0305. MEETINGS: REGULAR AND SPECIAL AND PLACE HELD: All meetings shall be held at the Commission Rooms, also known as the office of the City Auditor, in the City Hall in the City of West Fargo, North Dakota.

1-0306. SALARIES OF CITY COMMISSIONERS. The salary of the President of the Board of City Commissioners shall be \$15,000 per year, and the salaries of the City Commissioners shall be \$10,200 per year commencing January 1, 2015. Prior to January 1, 2015, the salaries set by Ordinance No. 780 shall remain in full force and effect. The salary shall be payable monthly in 12 equal payments or, at the option of a Commissioner, all payable in whole in June of each year commencing June 2015. In each calendar year after 2015, the salaries shall be increased the same percent as the cost of living adjustment percent given the salaries of other City employees for that budget year.

Source: Ord. 668, Sec. 1 (2003); Ord. 719, Sec. 1 (2004);
Ord. 780, Sec. 1 (2006); Ord. 1013, Sec. 1 (2014)

CHAPTER 1-04

APPOINTIVE OFFICERS AND CITY EMPLOYEES

Source: Ord. 981, Sec. 1 (2014)

SECTIONS:

- 1-0401. Authority to Provide for Appointive Officers and City Employees.
- 1-0402. Appointive Officers.
- 1-0403. Term of Appointive Officers, Oath, Bond.
- 1-0404. Removal of Appointive Officers.
- 1-0405. Salaries of Appointive Officers.
- 1-0406. City Employees.
- 1-0407. City Representative.
- 1-0408. City Personnel Manual.

1-0401. AUTHORITY TO PROVIDE FOR APPOINTIVE OFFICERS AND CITY EMPLOYEES. Pursuant to Chapter 40-05.1 of the North Dakota Century Code and the Home Rule Charter of the City of West Fargo, the City of West Fargo has the authority to provide for the selection, terms, powers, duties, compensation, qualifications and termination of City officers and employees. The City of West Fargo hereby implements the above-described powers through the enactment of this Ordinance. This Ordinance is specifically intended to supercede North Dakota Century Code Section 40-15-07.

1-0402. APPOINTIVE OFFICERS. At the first meeting after the qualification of its members, or as soon thereafter as possible, the Board of City Commissioners shall appoint the following officers: Administrator, Auditor, City Attorney, City Engineer, Building Inspector, City Assessor, Chief of Police and Chief of Fire Department. The Board of City Commissioners by majority vote may dispense with any appointive office and provide that the duties thereof shall be performed by other officers or boards, by the Board of City Commissioners, or by a committee. All other persons employed by the City of West Fargo are hereby designated as City employees pursuant to Section 1-406 of this Ordinance.

1-0403. TERM OF APPOINTIVE OFFICERS, OATH, BOND. The term of all appointive officers shall begin on July 1st after the regular election of City Commissioners and shall continue for a term of two (2) years and until their successors have been appointed and qualified. Any person appointed to fill a vacancy shall hold his office for the unexpired term unless appointed as an "acting officer." An "acting officer" shall serve at the pleasure of the governing body. Before entering upon the duties of his office, each appointed officer shall take the oath of office and give the bond required by law.

1-0404. REMOVAL OF APPOINTIVE OFFICERS. Any appointive officer may be removed and terminated without cause by a majority vote of all members of the Board of City Commissioners. The President of the Board of City Commissioners, or the Board by a majority vote of its members, may suspend any appointive officer against whom misconduct charges have been filed with the City until the disposition of the charges. The President of the Board may appoint a person to fill any vacancy temporarily until the charges against the incumbent of such office have been disposed of. Any person appointed by the President without confirmation may be removed by the President when the President deems it is for the best interest of the City.

1-0405. SALARIES OF APPOINTIVE OFFICERS. The salary of City appointive officers, except as otherwise provided by law, shall be in such sums and amounts as may be, by resolution of the governing body, fixed from time to time. The governing body may enter into contract for services with appointive officers.

1-0406. CITY EMPLOYEES. Any individual employed by the City of West Fargo who has not been appointed by the West Fargo City Commission as an appointive officer, is hereby deemed a City Employee for purposes of this Ordinance. City Employees are deemed to be at-will employees and may be terminated without cause by the City through its representative as designated in Section 1-407 of this Ordinance, at any time, with or without notice.

1-0407. CITY REPRESENTATIVE. The Board of City Commissioners hereby designates the West Fargo City Administrator as the City Representative with respect to termination of any City Employee. The West Fargo City Administrator may also designate other City Employees with the authority to terminate specific employees. In the event that the City Administrator makes such a designation, he/she shall provide the City Commission notice of such designation and shall keep the designation on file at the City's Human Resource office. The City Administrator may revoke such designation at any time and for any reason. The West Fargo City Administrator is also authorized to supervise all City Employees.

1-0408. CITY PERSONNEL MANUAL. In order to implement this Ordinance, the City Administrator is hereby authorized to prepare and maintain a West Fargo Personnel Manual. The West Fargo Personnel Manual shall set forth the employment policies and procedures of the City of West Fargo. The City Administrator shall file and maintain a copy of the West Fargo Personnel Manual in the City's Human Resource office.

CHAPTER 1-05

MUNICIPAL ELECTIONS

SECTIONS:

- 1-0501. Qualifications of Electors.
- 1-0502. Elections - Provisions Governing.
- 1-0503. Compensation of Election Officers.

1-0501. QUALIFICATIONS OF ELECTORS. Every resident of the City of West Fargo who is qualified to vote therein at general elections may vote in all municipal elections held therein. Each person shall vote in the precinct of which he is a resident.

1-0502. ELECTIONS - PROVISIONS GOVERNING. Municipal elections in the City of West Fargo shall be conducted in accordance with the statutes of the State of North Dakota which relate to elections in cities with a commission form of government.

1-0503. COMPENSATION OF ELECTION OFFICERS. Each inspector, judge or clerk of any City election, for services performed by that person at such election shall receive as compensation therefor an hourly wage equal to the federal minimum wage then in effect, or such higher amount as may be established by resolution of the Board of City Commissioners prior to such election.

CHAPTER 1-06

CIVIL DEFENSE

SECTIONS:

- 1-0601. Policy and Purpose.
- 1-0602. Creation of Municipal Civil Defense.
- 1-0603. Director, Powers and Duties.
- 1-0604. Operational Survival Plan.
- 1-0605. Personnel.
- 1-0606. Expenses and Contract.
- 1-0607. Immunity.

1-0601. POLICY AND PURPOSE. Because it has been forcefully emphasized that government at every level has the inescapable responsibility to take practical and sensible measures to minimize loss of life in the event of nuclear attack, sabotage or other hostile action and because of the possibility of natural disasters, and in order to take all possible actions to protect the lives and health of the people, establish continuity of government and preserve property of this City, it is hereby declared necessary:

1. To establish local civil defense;
2. Provide for continuity of government during an emergency with the maximum use of services, equipment, supplies and facilities of existing department offices and agencies of this City;
3. To cause to be written an operational survival plan for the mobilization and direction of the civil populace of this City to save the maximum number of lives and minimize property damage in an enemy attack or natural disaster;
4. To provide for the exercise of necessary powers during civil defense missions;
5. To provide for the rendering of mutual aid between this City and other political subdivisions and of other States with respect to carrying out civil defense functions.

It is further declared to be the purpose of this chapter to cause all civil defense functions of this City to be coordinated to the maximum extent with the functions of the Federal Government, of this State and of other States, of Cass County and other localities, and of private agencies of every type, to the end that the most effective preparations and use may be made of the nation's manpower, resources and facilities for dealing with any disaster that may occur.

1-0602. CREATION OF MUNICIPAL CIVIL DEFENSE. There is hereby created a local municipal civil defense of the City of West Fargo hereinafter referred to as West Fargo Civil Defense. The West Fargo Board of Commissioners shall retain the governing authority of the City with the President of the Board of City Commissioners serving as Chairman. The President of the Board of City Commissioners shall appoint a Director of Civil Defense for the City of West Fargo who may or may not be a commissioned member, who shall be responsible to the Board of Commissioners. The West Fargo Civil Defense Director is charged with the responsibility of plans and operations and support missions as directed by higher authority. Other activities and functions are hereinafter specified. The said Director shall be appointed for an indefinite term and may be removed by the President of the Board of City Commissioners.

1-0603. DIRECTOR, POWER AND DUTIES. The Director, with the consent of the President of the Board of City Commissioners, shall represent the City on any National, Regional, State or County civil defense activities. He shall execute and submit all material and sign all documents in behalf of civil defense which do not obligate funds other than those budgeted for civil defense.

The Director shall develop mutual aid agreements with other political subdivisions for reciprocal civil defense aid and assistance in a civil defense emergency to great to be dealt with unassisted, and he shall present such agreements to the Board of Commissioners for concurrence. Such agreements shall be consistent with the County and State operational survival plan. Any mutual aid arrangement with a political subdivision of another State shall be subject to the approval of the Governor or the State Civil Defense Director.

The Director shall utilize the personnel, services, equipment, supplies and facilities of existing departments and agencies of the City to the maximum extent practicable. The officers and personnel of all such departments and agencies shall cooperate with and extend such service and facilities to local civil defense and to the Governor upon request. The head of each department and agency, in cooperation with and under the direction of the Director, shall be responsible for the planning and programming of such civil defense activities as will involve the utilization of the facilities of his department or agency.

The Director shall direct and coordinate the general operations of all local civil defense during a civil defense emergency in conformity with controlling regulations of the Board of City Commissioners and instructions of Cass County and State Civil Defense authorities. The heads of departments and agencies shall be governed by his orders in respect thereto.

1-0604. OPERATIONAL SURVIVAL PLAN. To institute an organized effort to mobilize and direct the civil populace during civil

defense emergencies an adequate civil defense operational survival plan for the City of West Fargo shall be accomplished by the civil defense director.

The operational survival plan will be coordinated with the Cass County and the State of North Dakota survival plans. It shall be the mission of said plan to accomplish the following:

1. Provide for continuity of government during an emergency with the maximum use of services, equipment, supplies and facilities.
2. Protect the people and the essential facilities of West Fargo from effects of enemy attack and/or natural disaster.
3. Control the movements or evacuation of traffic, through, within and/or out of the City in accordance with instructions of higher authority.
4. Provide the forces, supplies and equipment to aid the people and rehabilitation of facilities of attacked or damaged areas.

Upon completion of the West Fargo operational survival plan, the same shall be rendered to the Board of Commissioners for approval or further recommendations.

1-0605. PERSONNEL. The Board of City Commissioners is authorized to employ such persons as may be necessary to carry out the functions of civil defense. Persons so employed shall be subject to all laws, ordinances and regulations now existing in and governing the employees of this City.

1-0606. EXPENSES AND CONTRACT. The civil defense Director shall have no right to expend public funds of the City, other than those allowed by budgets, without prior approval of the City Commission, nor shall he have any right to bind the City by contract, agreement or otherwise without prior and written approval of the City Commission.

1-0607. IMMUNITY. All functions hereunder and all other activities relating to civil defense are hereby declared to be governmental functions. The officers, agents or representatives of the State or any political subdivision thereof, shall not be liable for personal injury or property damage sustained by any person appointed or acting as a civilian defense worker, or member of any agency engaged in civilian defense activity. The foregoing shall not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the Workmen's Compensation Law, or any pension law or any act of the United States.

No officer or employee nor any civilian defense worker or member of any agency engaged in any civil defense activity, complying with or attempting to comply with this chapter or the laws of the State of North Dakota or any order, rule or regulation promulgated pursuant to the provisions of this chapter or the laws of the State of North Dakota, or pursuant to any ordinance relating to any precautionary measure enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

CHAPTER 1-07

DISPOSAL OF CITY PROPERTY

SECTIONS:

- 1-0701. Sale of Personal Property.
- 1-0702. Sale of Real Property.
- 1-0703. Sale of Abandoned or Unclaimed Personal Property.
- 1-0704. Lease of Public Buildings.
- 1-0705. Lease of Personal Property or Real Property Other Than Buildings.

1-0701. SALE OF PERSONAL PROPERTY.

- 1. Whenever any personal property, owned by the City of West Fargo, is no longer required for a public purpose and has a value of \$500 or less, it may be offered for sale by the City Auditor, who may exercise his discretion as to the method of sale, and whether such sale shall be public or private.
- 2. Whenever any personal property owned by the City of West Fargo is no longer required for a public purpose and is valued in excess of \$500, it may be offered for sale by the City Commission, who may exercise its discretion as to the method of sale, and whether such sale shall be public or private. Provided, however, when the value of the personal property is estimated to be in excess of \$2,500, the property must be sold at a public sale, the exact method of sale to be determined by the City Commission. When property is to be traded in as part of the purchase price of a new purchase, no public sale shall be required.

1-0702. SALE OF REAL PROPERTY.

- 1. Real property belonging to the municipality shall be sold only as approved by a two-thirds (2/3rds) vote of all members of the Board of City Commissioners.
- 2. Instruments affecting such sale shall be valid only when duly executed by the President of the Board of City Commissioners and attested by the City Auditor.
- 3. When the real property to be disposed of is estimated by the Commission to be of a value of less than \$2,500, such property may be sold by the City either by private or public sale, with the exact method of sale to be determined by the City Commission. For real property estimated by the City Commission to be of value of \$2,500

or more, such sale must be by public sale pursuant to the provisions of 40-11-04.1 NDCC, unless the procedures set out in 40-11-04.2 NDCC is followed.

4. Bids for the purchase of real property belonging to the municipality, whether or not advertisement therefor has been made, shall be directed to the Board of City Commissioners and submitted to the City Auditor, who shall present any and all such bids to the Board of City Commissioners at its next regularly scheduled meeting, or special meeting called for such purpose.
5. When specific statutory provisions contained in the North Dakota Century Code provide for a procedure which is in conflict with this section governing the sale of real property, this section shall not apply insofar as it is in conflict with such State law.

1-0703. SALE OF ABANDONED OR UNCLAIMED PERSONAL PROPERTY.

1. When personal property has been abandoned or left unclaimed upon the streets, alleys or other public ways of the City for a period exceeding ten (10) days, and, after holding such property for a period of not less than sixty (60) days, the City Auditor, or Chief of Police may sell the same at a public sale after a notice is published in the official newspaper of the City at least ten (10) days before the sale. The City Auditor or Chief of Police may exercise their discretion as to the method of sale.
2. If, after a vehicle which has been impounded or removed pursuant to either Section 13-0208 or 13-1626, the vehicle is not reclaimed and redeemed (by the payment of the amounts indicated in Section 13-0208) by the owner or person lawfully entitled to possession thereof within sixty (60) days after the vehicle is impounded, then the vehicle may be sold in the manner provided in subsection 1. The notice of such sale shall specify a description of the property to be sold, and the time and place of such sale. Any sale may be postponed or discontinued by public announcement at the time of sale when there are no bidders, or when the amount offered is grossly inadequate, or for other reasonable cause. The City may be a purchaser of any or all property at such sale. The amount received at such sale shall be first applied to costs and expenses of the sale, next to satisfaction of any fines, fees, costs or restitutions outstanding which formed the basis for the impoundment or removal of the vehicle, and finally to the City general fund.

Source: Ord. 427, Sec. 3 (1992).

1-0704. LEASE OF PUBLIC BUILDINGS. The City Commission may permit the use or lease of any public building or part thereof for any legal purpose under the terms and conditions as determined by the City Commission, which may include lease terms in excess of two (2) years. Notice of the intent to lease the building shall be published in the official newspaper of the City once each week for two consecutive weeks, with the last publication being at least ten (10) days in advance of the date set for the lease. Such lease shall be to a responsible party offering the highest return to the municipality whose use or occupation of the building shall not interfere with the use of such building for public purposes, if needed. The City Commission reserves the right to reject any and all bids for the lease. Provided, that this section shall not apply to leases entered into pursuant to Chapter 40-57 NDCC.

1-0705. LEASE OF PERSONAL PROPERTY OR REAL PROPERTY OTHER THAN BUILDINGS. The City Commission may lease personal property owned by the City, or real property, other than public buildings, owned by the City. The City Commission may determine in each case the terms and conditions of the lease, and whether or not to publicly advertise the lease of the personal property or real property.

CHAPTER 1-08

MUNICIPAL COURT

SECTIONS:

- 1-0801. Convening of the Court.
- 1-0802. Place convened.
- 1-0803. Jurisdiction.
- 1-0804. Penalties - Fines - Fees. (Source: Ord. 1096, Sec. 1 - 2017)
- 1-0805. Sentencing Alternatives.
- 1-0806. Factors to be Considered in Sentencing.
- 1-0807. Special Sanctions for Organizations.
- 1-0808. Imposition of Fine - Response to Non-payment.
- 1-0809. Incidents of Probation.
- 1-0810. Conditions of Probation - Revocation.
- 1-0811. Restitution or Reparation - Procedures.
- 1-0812. Merger of Sentence - Sentencing for Multiple Offenses.
- 1-0813. Failure to Pay Fine or Appear in Court -- Criminal Offense.

1-0801. CONVENING OF THE COURT. The municipal court of the City of West Fargo shall convene at such time and for such duration as necessary to conduct and to transact the business of the municipal court.

1-0802. PLACE CONVENED. The municipal court of West Fargo shall convene and sit at the City Hall, City of West Fargo, State of North Dakota.

1-0803. JURISDICTION. The municipal court shall have such jurisdiction and authority as is authorized by the laws of the State of North Dakota.

1-0804. PENALTIES - FINES - FEES. The penalty or fine for violation of the provisions of the West Fargo Municipal Ordinances shall be as set forth in Section 1-0211. In addition to any fine, penalty, costs, or administrative fee prescribed by state law and under Section 1-0211, the Municipal Judge has the authority to impose a crime victim and witness fee for violations of West Fargo Municipal Ordinances in which the maximum penalty includes imprisonment. The Municipal Judge has discretion to determine the amount of the fee to be assessed in each case, not to exceed the sum of Twenty-Five Dollars (\$25.00). Crime victim and witness fees imposed and paid under this section must be deposited monthly in the City treasury for allocation to the Statewide Automated Victim Information and Notification System ("SAVIN").

Source: Ord. 1096, Sec. 1 (2017)

1-0805. SENTENCING ALTERNATIVES.

1. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of

the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the ordinance defining the offense:

- a. Payment of the reasonable costs of his prosecution.
- b. Probation.
- c. A term of imprisonment, including intermittent imprisonment.
- d. A fine.
- e. Restitution for damages resulting from a commission of the offense.
- f. Restoration of damaged property.
- g. Work detail.
- h. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

Sentences imposed under this subsection shall not exceed in duration the maximum sentences provided in Section 1-0804, or as provided specifically in an ordinance defining an offense.

This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under subdivisions (e) or (f) shall be imposed in the manner provided in Section 1-0805 . This subsection shall not be construed to prohibit utilization of suspension of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under Section 1-0805 .

2. Credit against any sentence to a term of imprisonment shall be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct by which such charge was based. "Time spent in custody" shall include time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.
3. A court may, at any time prior to the time custody of a convicted offender is transferred to a penal institution or institution for treatments, suspend all or a portion of any sentence imposed pursuant to this section.
4. A court may at any time prior to imposition of sentence, refer a person convicted of driving while under the influence of an intoxicating liquor or a narcotic drug, to an approved treatment facility for diagnosis. Upon receipt of the result of this diagnosis, the court may impose a sentence as prescribed in Section 1-0805 of this chapter or it may sentence the person to treatment in a facility approved by the State's Division of Alcoholism and Drug Abuse.

5. All sentences imposed shall be accompanied by a written statement by the court setting forth the reasons for imposing a particular sentence. The statement shall become part of the record of the case.
6. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of defendant, the Court orders the term to commence at some other time.

1-0806. FACTORS TO BE CONSIDERED IN SENTENCING. The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

1. The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
3. The defendant acted under strong provocation.
4. There were substantial grounds which, though insufficient to establish a legal defense, tend to execute or justify the defendant's conduct.
5. The victim of the defendant's conduct induced or facilitated its commission.
6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.
7. The defendant has no history of prior delinquency or criminal activity, or has led a law abiding life for a substantial period of time before the commission of the present offense.
8. The defendant's conduct was the result of circumstances unlikely to recur.
9. The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime.
10. The defendant is particularly likely to respond affirmatively to probationary treatment.
11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.

12. The defendant is elderly or in poor health.
13. The defendant did not abuse a public position of responsibility or trust.
14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

1-0807. SPECIAL SANCTIONS FOR ORGANIZATIONS. When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

1-0808. IMPOSITION OF FINE - RESPONSE TO NON-PAYMENT.

1. The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:
 - a. The ability of the defendant to pay without undue hardship.
 - b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission.
 - c. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.
 - d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.
2. The court may allow the defendant to pay any fine or costs imposed in installments. When a defendant is sentenced to pay a fine or costs, the court shall not impose at the same time an alternative sentence to be served in the event that the fine or costs are not paid.
3. If the defendant does not pay any fine or costs imposed, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that his default is excusable, the court may, after hearing, commit him to imprisonment until the fine, or costs, or both, are fully paid or discharged by labor as provided in NDCC 40-18-12.

The court may not commit a person under this section when the sole reason for his nonpayment is his indigency. An order of commitment under this subsection shall not be for a period in excess of thirty (30) days. As used in this subsection, "fine" does not include a fee established pursuant to Section 13-2209.

1-0809. INCIDENTS OF PROBATION.

1. Unless terminated as provided in subsection 2, the period during which a sentence to probation shall remain conditional and be subject to revocation is two (2) years.
2. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
3. Notwithstanding the fact that a sentence to probation can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for all other purposes.

1-0810. CONDITIONS OF PROBATION - REVOCATION.

1. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
2. When imposing a sentence to probation, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
 - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;
 - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;
 - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;
 - d. Support his dependents and meet other family responsibilities;
 - e. Make restitution or reparation to the victim of his conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of the sentence, the court shall proceed as provided in Section 1-0811;

- f. Pay a fine imposed after consideration of the provisions of Section 1-0808;
- g. Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court;
- h. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription;
- i. Promptly notify the court of any change in address or employment;
- j. Remain within the jurisdiction of the court, unless granted permission to leave by the court; and
- k. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances, except medical marijuana as permitted under Chapter 19-24.1 of the N.D.C.C.

Source: Ord. 1102, Sec. 1 (2017)

- 3. When a defendant is sentenced to probation, he shall be given a certificate explicitly setting forth the conditions on which he is being released.
- 4. The court may, upon notice to the probationer, modify or enlarge the conditions of a sentence to probation at any time prior to the expiration or termination of the period for which the sentence remains conditional. If the defendant violates a condition at any time prior to the expiration or termination of the period, the court may, pursuant to the procedure specified in N.D.R. Crim. P. 32(f), continue him on the existing sentence, with or without modifying or enlarging the conditions, or, if such continuation, modification, or enlargement is not appropriate, may impose any other sentence that was available under Section 1-0805 at the time of initial sentencing.
- 5. Jurisdiction over a probationer may be transferred from the court which imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection shall be authorized to exercise all powers permissible under this chapter over the defendant.

1-0811. RESTITUTION OR REPARATION - PROCEDURES.

- 1. Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determinations as to:

- a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to fruits of the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action;
- b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property; and
- c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to such order shall be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, if the court directs, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

1-0812. MERGER OF SENTENCES - SENTENCING FOR MULTIPLE OFFENSES.

1. Unless the court otherwise orders, when a person serving a term of commitment is committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this state is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. When the court merges sentences under this subsection it shall forthwith furnish each of the other courts previously involved and the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. If the court has imposed a sentence which is merged pursuant to this subsection, it shall modify

such sentence in accordance with the effect of the merger.

2. A defendant may not be consecutively sentenced to more than one year.

1-0813. FAILURE TO PAY FINE OR APPEAR IN COURT -- CRIMINAL OFFENSE. If a defendant willfully fails to pay any part of any fines, fees, costs or restitution imposed by the Municipal Court of the City of West Fargo, or if a defendant fails to appear for any scheduled court appearance before the Municipal Court of the City of West Fargo, then, in addition to the procedures and penalties set forth in Section 1-0808(3), the defendant shall be guilty of an offense pursuant to this section. Any person convicted under this section is guilty of a class B misdemeanor, regardless of whether the offense for which the defendant failed to pay any fines, fees, costs or restitution, or for which the defendant failed to appear, is an infraction, a misdemeanor, or a non-criminal traffic offense.

Source: Ord. 427, Sec. 1 (1992); Ord. 839, Sec. 1 (2009)

CHAPTER 1-09

SALES AND USE TAX.

Source: Ord. 992, Sec. 1 (2014)

SECTIONS:

- 1-0901. Definitions.
 - 1-0902. Sales Tax Imposed.
 - 1-0903. Use Tax Imposed.
 - 1-0904. Gross Receipts of Alcoholic Beverages.
 - 1-0905. Gross Receipts of New Farm Machinery and New Farm Irrigation Equipment.
 - 1-0906. Exemptions.
 - 1-0907. Collection and Administration.
 - 1-0908. Contract with State Tax Commissioner.
 - 1-0909. Corporate Officer Liability.
 - 1-0910. Dedication of Tax Proceeds.
 - 1-0911. Grandfather Clause.
 - 1-0912. Saving Clause.
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1-0901. DEFINITIONS. All terms defined in Chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2 of the North Dakota Century Code (N.D.C.C.), including any future amendments, are adopted by reference. All references to the N.D.C.C. include amendments adopted by the North Dakota Legislative Assembly.

1-0902. SALES TAX IMPOSED. Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided by this Ordinance, or the sales and use tax laws of the State of North Dakota, a tax of two percent (2%) is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property, within the corporate limits of the City of West Fargo, North Dakota.

1-0903. USE TAX IMPOSED. Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, or the sales and use tax laws of the State of North Dakota, an excise tax is imposed upon the storage, use, or consumption within the corporate limits of the City of West Fargo, North Dakota, of tangible personal property purchased at retail for storage, use, or consumption in this City, at the rate of two percent (2%) of the purchase price of the property. An excise tax is imposed on the storage, use, or consumption within the corporate limits of the City of West Fargo.

1-0904. GROSS RECEIPTS OF ALCOHOLIC BEVERAGES. Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of two percent (2%) is imposed upon all gross receipts from the sale of alcoholic beverages within the City. A person who receives alcoholic beverages for storage, use, or consumption in this city is subject

to tax on storage, use, or consumption of those alcoholic beverages at the rate of two percent (2%).

1-0905. GROSS RECEIPTS OF NEW FARM MACHINERY AND NEW FARM IRRIGATION EQUIPMENT. Subject to the provision of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of two percent (2%) is imposed upon all gross receipts from the sale of new farm machinery and new farm irrigation equipment within the City. A person who receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in this city is subject to tax on storage, use, or consumption of that machinery and/or equipment at the rate of two percent (2%).

1-0906. EXEMPTIONS. All sales, storage, use, or consumption of tangible personal property which are exempt from imposition and computation of the sales or use tax of the state of North Dakota are specifically exempt from the provisions of this article.

1-0907. COLLECTION AND ADMINISTRATION. Where not in conflict with the provisions of this Ordinance, the provisions of N.D.C.C. Chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2, and all administrative rules adopted by the Tax Commissioner, pertaining to the collection and administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund, penalty, interest or credit, govern the administration by the North Dakota Office of State Tax Commissioner (hereinafter "Tax Commissioner") of the taxes imposed by this Ordinance.

1-0908. CONTRACT WITH STATE TAX COMMISSIONER. The City Administrator/Auditor for the City of West Fargo is hereby authorized to contract with the Tax Commissioner for the administration and collection of taxes imposed by this chapter. The City Auditor has all powers granted the Commissioner and, in the absence of a valid contract with the Commissioner or failure of the Commissioner to perform the delegated duties, shall perform these duties in place of the Commissioner.

1-0909. CORPORATE OFFICER LIABILITY. Officers of any corporation required to remit taxes imposed by this article are personally liable for the failure of the corporation to file required returns or remit required payments. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax, penalty, and interest due may be assessed and collected pursuant to the provisions adopted by this article.

1-0910. DEDICATION OF TAX PROCEEDS. All fees, taxes, penalties and other charges imposed and collected under this chapter, less administrative costs shall be dedicated and utilized with City Commission consent only for infrastructure, improvements, including publicly-owned utilities and buildings, job creation, and business retention, expansion and recruitment. Use of sales tax

proceeds for job creation, business retention, expansion and recruitment shall include, but not be limited to, payment of special assessments and payment or reimbursement of land acquisition costs. Proceeds collected pursuant to this chapter from such sales and use tax, may be used to make direct payments of costs for the above purposes, or may be pledged to amortize bonds or other debt instruments which may be sold to finance such costs. All revenues raised and collected under this chapter, less administrative expenses, shall be dedicated as follows:

1. Twenty-five percent (25%) of the two percent (2%) City sales and use tax shall be dedicated for economic and job development.
2. Seventy-five percent (75%) of the City's two percent (2%) City sales and use tax shall be dedicated to infrastructure and improvements.

1-0911. GRANDFATHER CLAUSE. With respect to the purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in N.D.C.C. § 57-40.2-03.3, the tax imposed by this section applies only to bids submitted on or after the effective date of this Ordinance.

1-0912. SAVING CLAUSE. Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional, or invalid for any reason, the remainder of this ordinance shall not be affected thereby.

TITLE II.

SIDEWALKS AND STREETS

CHAPTERS:

- 2-01. Sidewalks and Driveways.
- 2-02. Streets.
- 2-03. Numbering of Buildings.
- 2-04. Snow Emergency Routes.
- 2-05. Excavation Code.
- 2-06. Street Resealing Program.

CHAPTER 2-01
SIDEWALKS AND DRIVEWAYS

SECTIONS:

- 2-0101. Scope of Chapter
- 2-0102. Duty of Property Owners to Construct and Maintain Sidewalks.
- 2-0103. License Necessary to Construct, Reconstruct and Repair Driveways.
- 2-0104. Contractor's License, Fee, Expiration Date.
- 2-0105. Bond.
- 2-0106. Name Stamp Required of Licensee.
- 2-0107. Sidewalk Construction, Permit Required, Fees.
- 2-0108. Construction Subject to Inspection, Request by Licensee.
- 2-0109. Tearing Up Sidewalk.
- 2-0110. Contract for Construction of Sidewalks, Bids, Specifications.
- 2-0111. Qualifications of Contractor.
- 2-0112. Bond to Accompany Contract.
- 2-0113. City Sidewalk Contract Controlled by City Engineer.
- 2-0114. City Sidewalk Contract, Scope of Work.
- 2-0115. Contractor to be Responsible Until Sidewalk Completed.
- 2-0116. Failure of Contractor to Fulfill Conditions.
- 2-0117. Measurement and Payment on City Contract.
- 2-0118. Width and Placement of Sidewalks.
- 2-0119. City Sidewalks, Driveways Construction Specifications.
- 2-0120. Materials in General.
- 2-0121. Snow and Ice on Sidewalk Removed by Owner and Occupant of Property.
- 2-0122. RESERVED FOR FUTURE USE.
- 2-0123. Sump Pump Hoses.

2-0101. SCOPE OF CHAPTER. This article shall govern all construction of all sidewalk approaches, alley returns, and driveways within the City of West Fargo.

2-0102. DUTY OF PROPERTY OWNERS TO CONSTRUCT AND MAINTAIN SIDEWALKS. Notwithstanding the provisions of 40-29-02 of the North Dakota Century Code, the duty to construct, reconstruct and maintain sidewalks in the City of West Fargo shall be as follows:

1. Except as hereinafter provided in subsection 5 or 6 of this section, the original owner of any building constructed in the City of West Fargo shall construct sidewalks along the street(s) in accordance with the requirements of this Chapter. This provision will apply to all lots for which a building permit is granted after November 14, 2004, and for all building permits issued for buildings in the plat of Westport Beach First

Addition, regardless of the date of issue. Construction of sidewalks on lots covered by this section shall be a prerequisite to the issuance of a certificate of occupancy for any building constructed on such lots. Provided, however, the Building Official may waive such requirement if the building officials determines that it was not possible to construct a sidewalk before the issuance of the certificate of occupancy because of weather conditions. In such a case, the lot owner must present proof to the building inspector that there is a contract in place for the construction of the sidewalk, and the owner of the lot must execute a petition, requesting that the sidewalk be constructed to the City. If a sidewalk is not constructed within sixty days of the issuance of the certificate of occupancy, or within sixty days after the first day a sidewalk permit is issued for the next construction season for a certificate of occupancy issued in the Winter, the City may contract to install the sidewalk and assess the cost against the lot owner. In addition, if the contractor who had the contract to construct the sidewalk fails to construct the sidewalk in the time frame required, that contractor may face a suspension of its right to be issued further building, and/or sidewalk permits in the City of West Fargo for a period up to one year.

2. The owner of any lot or parcel of land adjoining any street in the City of West Fargo shall reconstruct and maintain in good repair such sidewalks along the street(s) as have been previously constructed, and must construct such sidewalks when so ordered by resolution of the Board of City Commissioners.
3. Sidewalks must be constructed in accordance with all of the requirements of this Chapter.
4. It is the policy of the City of West Fargo that sidewalks be constructed along both sides of all streets and within cul-de-sacs. Construction of sidewalks in areas of the City not covered by Section 2-0102.1 and where sidewalks do not presently exist may be required by the City once eighty percent (80%) of the land frontage on the street has been developed.
5. A developer, at the time of platting a new subdivision or replatting a subdivision, must submit a sidewalk plan for approval by the Planning Commission and City Commission. Such plan must conform with the requirements of Section 2-0102.4 unless the City Commission, for good cause shown, waives the requirement for sidewalks on both sides of all streets and within cul-de-sacs. If the City waives the requirement for certain lots, the requirement of subsection 1 of this section will not apply.

6. Landowners may petition for sidewalk waivers to the City Commission using the following procedure:
 - a. A written petition, signed by a majority of the property owners within the area for which the waiver is requested may be submitted to the Auditor's office.
 - b. The Board of City Commissioners will consider the petition and may request Planning and Zoning Commission recommendations in making its final decision on the petition.
 - c. A waiver of the requirement for sidewalks will not constitute a waiver of the requirement to provide sufficient right-of-way to accommodate sidewalks in the future, in the event the waiver is rescinded pursuant to paragraph 7 of this section. If the City waives the request for certain lots, the requirement of subsection 1 of this section will not apply.
7. A waiver of the requirement for sidewalks which is granted pursuant to paragraphs 5 and 6 of this section may be rescinded as follows:
 - a. Upon submission of a petition signed by a majority of the owners of the property located within the area which is the subject of the waiver.
 - b. If the City determines that sidewalks in the area are necessary and that the rescission of the previously granted waiver is in the public interest.
 - c. Provided, however, that no such waiver shall be rescinded by the City without first having a public hearing on such decision after providing ten (10) days' written notice of the hearing to all landowners abutting the portion of the right-of-way where the rescission of the waiver is being considered.
8. All new sidewalk construction must conform to the Americans with Disabilities Act (ADA) standards adopted by the City of West Fargo, which standards will be available at the office of the City Engineer.

Source: Ord. 729, Sec. 1 (2004)

2-0103. LICENSE NECESSARY TO CONSTRUCT, RECONSTRUCT AND REPAIR DRIVEWAYS. No person may construct, reconstruct, or repair sidewalks or driveways within the City without first procuring a license from the City Auditor to engage in such work.

2-0104. CONTRACTOR'S LICENSE, FEE, EXPIRATION DATE. If a license to construct, reconstruct, and repair sidewalks and driveways is granted by the City Auditor, the person applying must pay to the City Auditor a license fee as set by resolution of the City Commission. All licenses in effect at the time of this ordinance amendment shall expire on March 31, 2014. Thereafter, the license period shall be from April 1 through March 31 of the following year.

Source: Ord. 959, Sec. 1 (2013)

2-0105. BOND. No license will be granted by the City Auditor unless such person has posted a bond in a sum set by resolution of the West Fargo City Commission with good and sufficient sureties therefor approved by the City Auditor conditioned, among other things, that the party will indemnify and save harmless the City of West Fargo from damages caused by reason of any negligence upon the part of the person, or any agent or employee of the person, that the materials used in the construction of the sidewalks and the methods of construction will be strictly in accordance with the requirements of this Chapter.

2-0106. NAME STAMP REQUIRED OF LICENSEE. Sidewalk construction licensees are required to have a stamp which must be used to imprint the contractor's name and year of construction into the constructed sidewalk. The stamp shall consist of letters one and one-quarter ($1\frac{1}{4}$) inches high and of sufficient depth to imprint to the depth of one-eighth ($1/8$) inch into the fresh concrete.

2-0107. SIDEWALK CONSTRUCTION, PERMIT REQUIRED, FEES. All public sidewalks constructed within the City must be built on the line and grade set by the City Engineer or his designee; and every person, firm or corporation must, before undertaking any sidewalk construction, reconstruction, or repair, request line and grade and obtain from the City Engineer, or his designee, a written permit for each separately-owned piece of property. The fee for a permit to construct, reconstruct or repair a public sidewalk will be an amount set by resolution of the City Commission. Before the permit will be issued, the applicant must also pay to the City a survey and staking fee. The staking and permit fee will be set by resolution of the City Commission. Upon the payment of the permit fee and the survey and staking fee, it will then be the duty of the City Engineer or his designee to survey and stake the lot or lots to correspond with the grade and line established by the City of West Fargo. The City Engineer, or his designee, will have 48 hours in which to stake the sidewalk after receiving a request for such work. For purposes of computing the 48 hours, Sunday will be excluded. No permit will be required for sidewalks constructed or reconstructed under a City contract.

2-0108. CONSTRUCTION SUBJECT TO INSPECTION, REQUEST BY LICENSEE. Licensee must request an inspection by the City Engineer, or his designee, after having constructed the forms, placed and compacted the sub-base and before the placing of any concrete. The City Engineer, or his designee, will have 24 hours in which to make the inspection after receiving notice, except that Sunday will not count towards the 24 hours. No concrete will be allowed to be poured until the inspection has occurred and approval given. If any sidewalk is poured prior to the inspection or

without approval of the City Engineer or his designee, the City may require testing to be done to ensure that the sidewalk was built in compliance with City standards and on proper grades, which cost will be the responsibility of the licensee. If the sidewalk does not conform to the grade or any other City standards, the City may require the sidewalk to be removed at the expense of the licensee.

2-0109. TEARING UP SIDEWALK. No person will injure or tear up any public sidewalk, or pedestrian/bikeway or drive any vehicle upon or across any public sidewalk or pedestrian/bikeway, without first obtaining the permission of the City Engineer or his designee. Anyone tearing up a public sidewalk or pedestrian/bikeway or excavating under, near or through a public sidewalk or pedestrian/bikeway without the permission of the City Engineer or his designee, must upon completion of such work place the sidewalk or pedestrian/bikeway in its original condition to the satisfaction of the City Engineer or his designee.

2-0110. CONTRACT FOR CONSTRUCTION OF SIDEWALKS, BIDS, SPECIFICATIONS. Each year, before the beginning of the construction season, the City Auditor will receive bids for the construction or reconstruction of such City sidewalks as the City may find necessary to construct. Such bids must be made upon proposals furnished by the City Engineer and conform to the specifications filed with the City Auditor by the City Engineer and approved by the Board of City Commissioners.

2-0111. QUALIFICATIONS OF CONTRACTOR. Any contractor bidding on the City contract for the construction of sidewalks must (1) have a sidewalk builder's license and (2) hold a North Dakota General Contractor's license.

2-0112. BOND TO ACCOMPANY CONTRACT. When any contract for the construction of sidewalks is about to be entered into by the City in accordance with the provisions of the laws of this state, the contractor to whom any such contract may be awarded will be required, before such contract is entered into, to give, in addition to the contract bond required by Section 48-01-01 of the North Dakota Century Code, a bond in an amount to be determined by the Board of City Commissioners, running to the City of West Fargo. Such bond must be conditioned upon the contractor maintaining and keeping in good repair for a period of two (2) years all sidewalks so constructed by such contractor under the terms of such contract. In case of default on the part of such contractor to so maintain and keep such sidewalks in good repair for the period of two (2) years, or in case such sidewalks within such time begin to crumble or disintegrate or become cracked and broken to such an extent that, in the opinion of the City Engineer, the same is not in satisfactory compliance with the specifications for the construction thereof, then the City Engineer may direct that such sidewalk be immediately repaired or re-laid, in whole or in part, as the Engineer deems best. The contractor immediately will cause the same to be repaired or re-laid; and in the case of the contractor's neglect, refusal, or failure so to repair or relay the same, the City, at any time within the two-year period or

thereafter, may cause the same to be repaired or re-laid and the cost thereof, whether done by the City directly or through a contract, may be recovered against the contractor and the surety upon such bond.

2-0113. CITY SIDEWALK CONTRACT CONTROLLED BY CITY ENGINEER. The contractor must report to the City Engineer for the purpose of receiving orders with reference to any work under the City sidewalk contract and for accurate information on the location of sidewalks; and the contractor must not begin work until so informed and until the contractor has in its possession a written order of work.

The contractor must begin work within ten (10) days of such written order of work, unless the contractor receives written permission from the City Engineer to start at a later date. The contractor should complete the work in a continuous operation insofar as possible. The contractor must notify the City Engineer before beginning work upon each sidewalk ordered.

2-0114. CITY SIDEWALK CONTRACT, SCOPE OF WORK. The City sidewalk contract may include the construction, reconstruction, and repair of all sidewalks, sidewalk approaches, alley returns, and crossings deemed necessary by the Board of City Commissioners.

The contractor must report all obstructions to the sidewalk, water stop boxes, poles, hydrants, etc., The Contractor must use, throughout the work, materials and workmanship approved by the City Engineer. The decision of the City Engineer as to the manner in which the work must be executed and the quality of the work and material will be final and conclusive.

When the work is completed, the contractor must immediately remove all surplus material, whether old or new, and leave the sidewalk, gutter, and roadway free and unobstructed.

2-0115. CONTRACTOR TO BE RESPONSIBLE UNTIL SIDEWALK COMPLETED. The contractor will have charge of and be responsible for the entire work until its completion and acceptance.

Properly skilled workmen will only be employed on the work; and the contractor will dismiss any employee who may, in the opinion of the City Engineer, be negligent or who performs the work in an improper manner.

The contractor will, at all times, either be on the work site or have a competent foreman on the work site who must have all the authority of the contractor and to whom orders, instructions and directions may be given by the City Engineer.

The contractor must not subcontract or assign any of the work under any contract made pursuant to this chapter without the written permission of the City Engineer.

The Contractor will be responsible for bringing to grade and checking for usability all stop boxes within sidewalk lines.

Information on locations of stop boxes may be obtained from the City Water Department.

2-0116. FAILURE OF CONTRACTOR TO FULFILL CONDITIONS. The finished sidewalk may not be used until, in the opinion of the City Engineer, it has set sufficiently to receive travel.

The City Engineer has the power to reject any material or work not in accordance with this chapter and the Engineer's instructions and orders, and any material work rejected, must be removed immediately by the contractor and properly replaced at contractor's own expense.

In case the contractor neglects or refuses to remove any rejected material or work or to replace the same with proper material or work, such material or work may be removed and replaced by the City Engineer at the contractor's expense, and the cost of any such removal and replacement shall be deducted from any money that may be due, or may become due, the contractor from the City.

2-0117. MEASUREMENT AND PAYMENT ON CITY CONTRACT. At the completion of each sidewalk constructed under a City contract, the contractor must measure the material and work involved, must complete the estimate form provided, and must forward a duplicate of the form to the City Engineer for verification and payment.

2-0118. WIDTH AND PLACEMENT OF SIDEWALKS. All sidewalks constructed or reconstructed in the City must be no less than four (4) feet in width and so laid that the inner edge shall be two (2) feet outside the property line, except as otherwise designated by the Board of City Commissioners, provided that:

1. No sidewalk may be reconstructed of a width less than that existing prior to construction.
2. Sidewalks may be substituted by combination sidewalk/bikeway facilities in accordance to the Metropolitan Bikeway Standards and approved by the Board of City Commissioners.
3. In commercial areas, sidewalks must be a minimum of six (6) feet in width, unless a lesser width is approved by the City Commission.

2-0119. CITY SIDEWALKS, DRIVEWAYS CONSTRUCTION SPECIFICATIONS. All City sidewalks must be a minimum of four (4) inches thick, except within driveways where the sidewalk must be of the same thickness as the driveway. Sidewalks over vaults or other openings must be constructed to carry a load of not less than two hundred fifty (250) pounds per square foot. No concrete tile may be used in the construction or reconstruction of any City sidewalks.

All residential driveways must be six (6) inches thick and must be no less than nine (9) feet wide at the sidewalk line, and must be located so as to provide access to a parking space within the property to be served. All commercial or industrial driveways

must be seven (7) inches thick and must be no more than thirty-six (36) feet in width. Provided, however, that such commercial or industrial driveway may, upon approval of the City Engineer, be constructed to a maximum width equal to one-half of the width of the lot. The maximum width of residential driveways is as follows:

On lots less than 50 feet	20 feet wide
On lots greater than 50 feet up to 60 feet	25 feet wide
On lots greater than 60 feet up to 80 feet	30 feet wide
On lots greater than 80 feet	40 feet wide

The maximum driveway width will apply from the intersection with the street to the property line. The width between the sidewalk line and the property line may not be greater than the width at the sidewalk line.

If there are two driveway accesses on the same street for the same property, the combined total width of both driveways may not exceed the width restrictions set out above.

Driveways should be designed in accordance to the following schedule and approved by the Building Inspector or City Engineer prior to construction:

<u>Designation of Street</u>	<u>Minimum Distance to Property Line Nearest the Intersection</u>
Local Street Approaching Local Street	20 feet
Local Street Approaching Collector Street	30-50 feet
Local Street Approaching Arterial Street	150-200 feet
Collector Streets	Limited Access
Arterial Streets	Limited Access

Access onto designated Collector or Arterial streets should be via a local street system. In instances where this, or the minimum distance to the intersection as set out above, cannot be achieved, approval must first be obtained by the City Commission following review by the Planning and Zoning Commission. The City's Subdivision Regulations provide general guidelines for access points and access spacing on Collector and Arterial Streets. Prior to consideration by the Planning and Zoning Commission or City Commission, a traffic analysis may be required to ensure adequate and safe traffic operations.

Distances between driveways and intersections are measured from the edge of the driveway closest to the intersection and the right-of-way line of the intersecting street. In no case will the

aggregate width of the driveway into a property exceed one-half ($\frac{1}{2}$) the width of that property.

SOURCE: Ord. 491, Sec. 1 (1995); Ord. 660, Sec. 1 (2003); Ord. 917, Sec. 1 (2012)

2-0120. MATERIALS IN GENERAL. Design specifications and material requirements for sidewalks and driveways in the City will be available at the office of the City Engineer. All sidewalks and driveways constructed in the City must conform to those requirements.

2-0121. SNOW AND ICE ON SIDEWALK REMOVED BY OWNER AND OCCUPANT OF PROPERTY. No snow or ice may be allowed to stand or remain upon any public sidewalk within the City of West Fargo. If any person or corporation either neglects or refuses to remove the snow or ice on a public sidewalk abutting the person's or corporation's property, after forty-eight (48) hours notice by the Superintendent of Streets, or his designee, the person or corporation will be subject to the penalties set out in Section 1-0211. In addition, the Superintendent of Street, or his designee, may cause the snow or ice to be removed. The expense incurred in the removal will be charged and assessed against the abutting property by special assessment in a manner prescribed by law.

2-0122. RESERVED FOR FUTURE USE.
(Repealed by Ord. 961, Sec. 10 (2013))

2-0123. SUMP PUMP HOSES. Sump pump hoses may not be placed on or over a public sidewalk. Property owners may request permission from the Public Works Director to bury their sump pump hose under the public sidewalk.

Source: Ord. 706, Sec. 1 (2004)

CHAPTER 2-02

STREETS

SECTIONS:

- 2-0201. Supervision of Construction.
- 2-0202. Pipes and Conduits in Streets: Prevention of Leaks.
- 2-0203. Pipes and Conduits in Streets: Repair of Breaks.
- 2-0204. Superintendent of Streets to Notify Owner of Leak.
- 2-0205. Failure of Owner to Repair.
- 2-0206. Construction of Sewer, Vault, Cellar, Cistern or Well in Street - Permit.
- 2-0207. Excavation in Streets: Permit.

2-0201. SUPERVISION OF CONSTRUCTION. Whenever any public streets are constructed in the City of West Fargo, such construction shall be under the supervision of the City Engineer.

Source: Ord. 254, Sec. 5 (1978).

2-0202. PIPES AND CONDUITS IN STREETS: PREVENTION OF LEAKS. It shall be the duty of every person, firm or corporation forcing, transmitting or conveying water or gas through pipes or other conduits which have heretofore been, or shall be hereafter, laid in any street, alley or public ground in the City of West Fargo, to prevent the public use of such street, alley or public ground from being or becoming in any way impaired, obstructed, injured or rendered dangerous or offensive by the escape of water or gas into or upon said street, alley or public ground, out of said pipes or conduits.

Source: Ord. 96, Sec. 1 (1960).

2-0203. PIPES AND CONDUITS IN STREETS: REPAIR OF BREAKS. In case any such pipe or conduit shall break out or burst so that water or gas shall escape from the same into or upon any such street, alley or public ground in said City, it shall be the duty of any person, firm or corporation forcing, transmitting or conveying water or gas through the same, within twenty-four (24) hours after having received notice or knowledge of the escaping water or gas therefrom as aforesaid, to commence and diligently prosecute the repair of said pipe or other conduit, in case such pipe or other conduit is owned by such person, firm or corporation, and if such, pipe or other conduit is not owned by such person, firm or corporation, such person, firm or corporation shall immediately shut off the water or gas therefrom until same is repaired.

Source: Ord. 96, Sec. 2 (1960).

2-0204. SUPERINTENDENT OF STREETS TO NOTIFY OWNER OF LEAK. It shall be the duty of the Superintendent of Streets, upon discovery of the fact that water or gas is escaping from any pipe or other conduit, used as aforesaid, into or upon any street, alley or public ground, to immediately notify the person, firm or corporation forcing, transmitting or conveying water or gas through the same, of such escape.

Source: Ord. 96, Sec. 3 (1960).

2-0205. FAILURE OF OWNER TO REPAIR. In case any person, firm or corporation forcing, transmitting or conveying water or gas through any pipe or other conduit laid in any street, alley or public ground of the City of West Fargo shall neglect or refuse to repair the same, in case it is owned by such person, firm or corporation, or to shut the water or gas off therefrom in case it is not owned by such person, firm or corporation, in accordance with Section 2-0402, then the Superintendent of Streets under the direction of the City Engineer of the said City shall forthwith proceed to repair said pipe or other conduit, and the cost shall be recovered by the City in an action for that purpose from such person, firm or corporation.

Provided, that the foregoing provision shall not apply to any water mains or service pipes which are owned or under the control of the City of West Fargo and under the supervision of the Superintendent of Waterworks.

Source: Ord. 96, Sec. 4 (1960).

2-0206. CONSTRUCTION OF SEWER, VAULT, CELLAR, CISTERN OR WELL IN STREET - PERMIT. No person shall construct, or cause to be constructed or made, any sewer, vault, cellar, cistern or well in any of the streets or public places of the City without the express authority from the City Engineer.

Source: Ord. 96, Sec. 6 (1960).

2-0207. EXCAVATION IN STREETS: PERMIT. It shall be unlawful for any person, persons, firm or corporation to open up or make any excavation in or upon any street or alley in the City of West Fargo, for any purpose, without first having obtained a permit so to do as provided in Chapter 2-05 of the ordinances of the City of West Fargo.

Source: Ord 96, Sec. 7 (1960).

CHAPTER 2-03

NUMBERING OF BUILDINGS

Source: Ord. 917, Sec. 2 (2012)

SECTIONS:

- 2-0301. City Planner to Designate Number.
- 2-0302. Owner's Duty.

2-0301. CITY PLANNER TO DESIGNATE NUMBER. The City Planner shall develop addresses for residential, commercial and other buildings in the City according to the West Fargo Street Naming and Address Standards adopted by resolution by the City Commission.

2-0302. OWNER'S DUTY. It shall be the duty of the owner, owners or occupants of any building or buildings in the City of West Fargo fronting upon any street or avenue therein to place and keep in a conspicuous place on the front of such building or buildings the proper number or numbers thereof, as designated by the City Planner.

CHAPTER 2-04

SNOW EMERGENCY ROUTES

SECTIONS:

- 2-0401. Declaration of Emergency.
- 2-0402. Declaration of Emergency to the Public.
- 2-0403. Parking on Snow Emergency Routes.
- 2-0404. Stalled Vehicle on Snow Emergency Route.
- 2-0405. Signs to Mark Snow Emergency Routes & Signs to Mark Parking Prohibition.
- 2-0406. Impounding Vehicles.
- 2-0407. Designation of Snow Emergency Routes.
- 2-0408. Severability.

2-0401. DECLARATION OF EMERGENCY.

1. Whenever in the opinion of the Superintendent of Streets or in his absence, the Assistant Street Superintendent or in the absence of both the Superintendent of Streets and the Assistant Street Superintendent, the Commissioner in charge of Streets, an emergency exists in the City because of falling snow, sleet, freezing rain or on the basis of a forecast by the U.S. Weather Bureau that weather conditions would create or will likely create hazardous road conditions impeding or likely to impede the free movement of fire, health, police, emergency or other vehicular traffic or otherwise endanger the safety and welfare of the community, such official shall put into effect a parking prohibition on Snow Emergency Routes as established by this chapter by declaring in the manner prescribed by Section 2 that a snow emergency exists.

Source: Ord. 310, Sec. 1 (1982).

2-0402. DECLARATION OF EMERGENCY TO PUBLIC.

- A. Superintendent of Streets or other official authorized by this chapter shall cause each declaration made by him pursuant to this chapter to be publicly announced by means of broadcasts or telecasts from stations with a normal operating range covering the city, and he may cause such declaration to be further announced in newspapers of general circulation when feasible. Each announcement shall describe the action taken by the Public Works Director or other official authorized by this chapter, including the time it became or will become effective, and shall specify whether it is applicable to primary snow emergency routes only, or both primary and secondary snow emergency routes; and shall not go into

effect until at least three hours after it has been announced at least three times between 6:00 a.m. and 11:00 p.m. on any day.

- B. The Superintendent of streets or other official authorized by this chapter shall make or cause to be made a record of each time and date when any declaration as announced to the public in accordance with this section.
- C. Termination of Parking Prohibition by the Superintendent of Streets or Other Official Authorized by This Chapter -- Whenever the Superintendent of Streets or other official authorized by this chapter shall find that some or all of the conditions which give rise to a parking prohibition in effect pursuant to this chapter no longer exist, he may declare the prohibition terminated, in whole or in part, in the manner prescribed by this chapter, effective immediately upon announcement.
- D. Provisions Temporarily Effective to Take Precedence -- Any provision of this chapter which becomes effective by declaration of the Superintendent of Streets or other official authorized by this chapter, or upon the occurrence of certain weather conditions shall, while temporarily in effect, take precedence over other conflicting provisions of law normally in effect, except that it shall not take precedence over provisions of law relating to traffic accidents, emergency travel of authorized emergency vehicles or emergency traffic directions by a police officer.

Source: Ord. 310, Sec. 2 (1982).

2-0403. PARKING ON SNOW EMERGENCY ROUTES.

- A. A parking prohibition shall automatically go into effect on any part of any primary snow emergency route on which there has been part of an accumulation of snow and ice of three inches or more for one hour or more between 6:00 a.m. and 11:00 p.m. of any day.
- B. A prohibition of parking on secondary snow emergency routes will only come into effect upon announcement as set out in Section 2-0402. The announcement may include all or part of the secondary snow emergency routes and may provide different times for prohibited parking on different streets and avenues.
- C. Once in effect, a prohibition under this section shall remain in effect until terminated by announcement of the Superintendent of Streets in accordance with this chapter, except that any street area which has become substantially clear of snow and ice from curb to curb for the length of the entire block shall be automatically

excluded therefrom. While the prohibition is in effect, no person shall park or allow to remain parked any vehicle on any portion of a primary snow emergency route to which it applies. However, nothing in this section shall be construed to permit parking at any time or place where it is forbidden by any other provision of law.

SOURCE: Ord. 310, Sec. 3 (1982); Ord. 327, Sec. 1 (1983);
Ord. 355, Sec 1 (1986); Ord. 767, Sec. 1 (2005).

2-0404. STALLED-VEHICLE ON SNOW EMERGENCY ROUTE. Whenever a vehicle becomes stalled for any reason, whether or not in violation of this chapter, on any part of a snow emergency route on which there is a covering of snow, sleet or ice or on which there is a parking prohibition in effect, the person operating such vehicle shall take immediate action to have the vehicle towed or pushed off the roadway of such snow emergency route, either into the first cross street which is not a snow emergency route, or onto the public space portion of a nearby driveway. No person shall abandon or leave his vehicle in the roadway of a snow emergency route (regardless of whether he indicates, by raising the hood or otherwise, that the vehicle is stalled), except for the purpose of securing assistance during the actual time necessary to go to a nearby telephone or to a nearby garage, gasoline station or other place of assistance and return without delay.

SOURCE: Ord. 310, Sec. 4 (1982); Ord. 355, Sec. 2 (1986).

2-0405. SIGNS TO MARK SNOW EMERGENCY ROUTES & SIGNS TO MARK PARKING PROHIBITION.

- A. On each street designated as a primary snow emergency route, as set forth in Section 2-0407 of this chapter, shall be posted special signs "Snow Emergency Route."
- B. On each street where parking is prohibited, as set forth in Section 2-0403, "No parking" signs shall be posted.
- C. No signs shall be required on secondary snow emergency routes.

SOURCE: Ord. 310, Sec. 5 (1982); Ord. 355, Sec. 3 (1986).

2-0406. IMPOUNDING VEHICLES.

- A. Any vehicle stopped on any primary or secondary snow route in violation of any of the provisions of this article may be impounded, and no person shall recover any vehicle removed pursuant to this section without first paying the cost of storage either directly to the towing service and storage place, or by reimbursing the City if the City shall have previously paid such charges, plus an additional Twenty-five and no/100 Dollars (\$25.00)

payable to the City to cover the costs of the City in assisting the impounding of said vehicle.

- B. In addition to the fees set forth in subsection A, any person violating any of the provisions of Chapter 2-04 of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211.

SOURCE: Ord. 310, Sec. 6 (1982); Ord. 355, Sec. 4 (1986);
Ord. 385, Sec. 7 (1989).

2-0407. DESIGNATION OF SNOW EMERGENCY ROUTES.

- A. Streets in the City of West Fargo designated as primary snow emergency routes shall be as set out in a Resolution passed by the City Commission of the City of West Fargo.
- B. All other City streets in the City of West Fargo, North Dakota, not set forth in the Resolution are designated as secondary snow emergency routes.

SOURCE: Ord. 310, Sec. 7 (1982); Ord. 355, Sec. 5 (1986);
Ord. 514, Sec. 1 (1997); Ord 606; Sec. 1 (2000);
Ord. 662, Sec. 1 (2003); Ord. 767, Sec. 1 (2005).

2-0408. SEVERABILITY. Should any part or provision of this chapter be declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of the chapter as a whole, or any part thereof, other than the part declared to be invalid.

Source: Ord. 310, Sec. 8 (1982).

CHAPTER 2-05

EXCAVATION CODE

Source: Ord 564, Sec. 1 (1999)

SECTIONS:

- 2-0501. Definitions.
- 2-0502. Excavator's Registration.
- 2-0503. Permit to Excavate.
- 2-0504. Exemptions.
- 2-0505. Performance Deposits.
- 2-0506. Pre-excavation Requirements.
- 2-0507. Warranty.
- 2-0508. Joint Application.
- 2-0509. Supplementary Applications.
- 2-0510. Denial of Permit.
- 2-0511. Inspection.
- 2-0512. Revocation of Permits.
- 2-0513. Mapping Data.
- 2-0514. Location of Facilities.
- 2-0515. Relocation of Facilities.
- 2-0516. Damage to Other Facilities.
- 2-0517. Right-of-Way Vacation.
- 2-0518. Excavation Moratorium.
- 2-0519. Emergency Excavation.
- 2-0520. Preservation of Monuments.
- 2-0521. Inspections.
- 2-0522. Regulations.
- 2-0523. Severability.
- 2-0524. Penalty.
- 2-0525. Appeal.

2-0501. **DEFINITIONS.**

- 1. "Alley" shall mean the length as dedicated for use by the public and the width as defined by the property lines on each side thereof.
- 2. "Berm" shall mean that portion of the street lying outside the traveled way.
- 3. "City" shall mean the City of West Fargo, North Dakota.
- 4. "Controlled density fill" (CDF) shall mean a sand, cement and/or fly ash slurry resulting in a 50 to 100 PSI material used for backfill.
- 5. "Director" means the Public Works Director of the City, or his or her designee.

6. "Emergency" shall mean a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.
7. "Excavation" means any removal or disturbance of material to a depth of more than three inches within the traveled way of any street or alley or the removal or disturbance of material to a depth of more than ten inches in sod or soil areas of any publicly-owned property. Excavation is further defined to include all tunneling, pushing, or jacking under any publicly-owned property within the corporate limits of the City of West Fargo.
8. "Excavator" shall mean any person, firm or corporation who performs the act of excavation through the use of mechanically powered equipment or otherwise.
9. "Facility" or "Facilities" means any tangible asset in the right-of-way required to provide utility service.
10. "Lateral Support" of a public place shall be considered impaired whenever an excavation extends below a plane sloping downward at an angle of 45 degrees from the boundary of the public place, or whenever a proposal excavation would expose any adverse geological formation of soil condition.
11. "Right-of-Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.
12. "Street" shall mean the length as dedicated for use by the public and the width as defined by the property lines on each side thereof.
13. "Traveled Way" means the width from curb to curb on curbed streets, from edge to edge on asphalt non-curbed streets, and from shoulder to shoulder on gravel streets.
14. "Utilities" for the purpose of this ordinance, shall include all underground cables, conduit and pipe used for the transportation or distribution of fuel, electricity, communication services, water or sewage.

2-0502. **EXCAVATOR'S REGISTRATION.** No person, firm or corporation shall engage in the practice of Excavation within

public right-of-way unless registered as an Excavator in the City of West Fargo, or under contract with the City. An Excavator's registration will be issued by the City Auditor upon submission of a written application on forms obtained from the Auditors and upon fulfilling the fee, bonding and insurance requirements as specified herein. The registration period shall be from January 1 to December 31 of each year.

1. Fee. The registration fee for an Excavator's registration for a calendar year or any part thereof shall be set by resolution of the Board of City Commissioners.
2. Insurance. Any person, firm or corporation licensed as an excavator must file proof of liability insurance in the amount of Two Million dollars (\$2,000,000) with the City Auditor. The insurance must name the City as an additional insured as to whom the coverages required are in full force and applicable and for whom defense will be provided as to all such coverages. The insurance shall also require that the City Auditor be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term.

2-0503. **PERMIT TO EXCAVATE.**

1. No excavation within public right-of-way shall be initiated without a permit being issued by the City of West Fargo, except as otherwise provided in Section 2-0504 of this chapter. Application for an excavation permit shall be made at least 24 hours in advance, in writing, to the Director of the City on forms provided by the City. In the case of a bona fide emergency, the written application may be filed after the excavation has been initiated providing that the intent to excavate has been reported to the department of the Public Works Director, either in person or by telephone.
2. A permit to excavate shall be issued only to a registered Excavator, to a governmental unit of the City, to a contractor performing work under a written contract with any governmental unit or to the owner of a utility franchised to operate within the corporate limits of the City of West Fargo; however, the issuance of a permit under the provisions of this ordinance shall not relieve any permittee from compliance with all requirements of this ordinance nor relieve the permittee of any liability for damage to any existing utility. The City of West Fargo assumes no liability whatsoever by virtue to the issuance of said permit. The permit shall be maintained on the site while the excavation is in progress. The permit holder will provide the Public Works Director with an emergency phone number of a responsible employee who can be contacted during non-working hours. The fee for each permit issued under the provisions of this ordinance

shall be set by resolution of the Board of City Commissioners. Every permit issued under the provisions of this ordinance shall expire by limitation and become null and void if the work authorized by such permit is not commenced within twenty days from the date of such permit.

3. Where the permittee will not be the owner of the facilities installed, the owner (or the entity who will become the owner after completion of the project) will also be required to execute the application for permit, be listed on the permit, and be subject to the indemnification and warranty provisions of Section 2-0503(4) and 2-0507.
4. The permittee in the permit must agree to hold the City harmless from any and all damages claimed by reason of negligence, incompetence or omission on the part of such person, firm or corporation in the performance of their work, the same to include, but not be limited to, careless guarding of excavations made by them or failure to restore all public properties to as good a condition as they were before such work was done, or for any damages growing out of the negligence or carelessness of any such licensed person, firm or corporation.
5. An application for a permit will be considered complete only upon compliance with the requirements of the following provisions:
 - a. Registration pursuant to this chapter.
 - b. Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project, and the location of all known and existing proposed facilities.
 - c. Payment of money due the City for:
 - (1) Permit fees and franchise or user fees, if applicable;
 - (2) Any overdue permit or fee payment;
 - (3) Any disputed loss, damage or expense suffered by the City as a result of applicant's prior excavating or any emergency actions taken by the City;
6. The Director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and

welfare or when necessary to protect the right-of-way and its current use.

7. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (a) makes a supplement to the application for another right-of-way permit before the expiration of the initial permit, and (b) a new permit or permit extension is granted.
8. Notwithstanding subdivision 6 of this section, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching or restoration. The delay penalty shall be established from time to time by the City Commission by resolution.

2-0504. **EXEMPTIONS.**

1. The following shall be exempt from the registration and permit requirements:
 - a. Employees of the department of street of the City of West Fargo, while engaged in work directed by the City, shall be exempt from the requirements of Sections 2-0502 and 2-0503 of this chapter.
 - b. West Fargo Park District employees when performing work within the property lines of the areas designated as the park system.
2. The following shall be exempt from the registration requirements:
 - a. All governmental units of the City.
 - b. All contractors performing work under a written contract with any governmental unit of the City.
 - c. Utilities which have a franchise agreement with the City. However, all contractors hired by such utility must be registered.

2-0505. **PERFORMANCE DEPOSITS.** Deposits as required under this section shall be cash, a certificate of deposit, or a surety bond approved by the City Attorney.

1. Certificates of deposit. If a certificate of deposit is used, the certificate must be held by a financial institution located within the city limits of the City of West Fargo or Fargo, North Dakota, and there must be an escrow agreement in a form satisfactory to the City Attorney executed by the City, financial institution, and permittee.

2. Annual Deposits. Any person intending to make openings, cuts or excavations in public places may make and maintain, with the City Auditor, an annual deposit in an amount set by resolution by the Board of City Commissioners, and the person so depositing shall not be required to make the special deposits provided in this section but shall, however, be required to comply with all other applicable provisions of this ordinance.
3. Purpose of Deposits. Any special or annual deposit made hereunder shall serve as security for the repair and performance of work necessary to put the public place in as good a condition as it was prior to the excavation, for a period extending through the warranty period, and to cover any penalties imposed for delay.
4. Special Deposits. Special deposits shall be required for all permits not covered by an annual deposit. The amount of each special deposit shall be determined by the Public Works Director of the City on a case-by-case basis in accord with paragraph 3.
5. Refund or Reduction of Deposits. Upon the permittee's completion of the work, covered by a permit in apparent conformity with this chapter as determined by the Public Works Director, two-thirds of such deposit shall be refunded or released by the City, with the remaining balance being released at the completion of the warranty period.
6. Refund or reduction of annual deposits. Two-thirds of any annual deposit shall be refunded by the City at the end of the one-year period for which the deposit is made or the apparent satisfactory completion of all excavation work undertaken during such period, whichever is later, and the balance of the annual deposit shall be released at the expiration of the warranty period.
7. Use of Deposits. Part, or all, of any such deposit may be used to pay the cost of any work the City performs or has contracted to another entity to restore or maintain the public place as provided in this chapter in the event the permittee fails to perform such work, and to cover any penalty for delay which is not paid directly by the permittee.

2-0506. **PRE-EXCAVATION REQUIREMENTS.** It shall be the responsibility of each permittee to notify all utility companies of the intended excavation. Except in the case of a bona fide emergency, a minimum 24-hour advance notice is required. The permit form shall serve as a guide to assist the permittee in scheduling and documenting utility clearance.

2-0507. **WARRANTY.** The permittee warrants that restoration work will meet the requirements of this chapter for a period of twenty-four (24) months following the completion of the work. During this twenty-four (24) month period, it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Director. Such work shall be completed within five (5) calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable. If permittee fails to restore the right-of-way in the manner and condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director, the Director, at its option, may do such work or contract for such work to be done. In that event, the permittee shall pay to the City within thirty (30) days of the billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its right under the deposits required by this chapter, and if such sums are not sufficient, the City may otherwise seek payment from the permittee and/or owner of the facilities installed.

2-0508. **JOINT APPLICATION.**

1. Registrants may jointly apply for permits to excavate or construct a right-of-way at the same place and time.
2. Registrants who apply for permits for the same obstruction or excavation may share in the payment of the permit fees. Registrants must agree among themselves as to the portion each will pay and indicate the same on their application.
3. Registrants who apply for permits for the same obstruction or excavation may share in the required deposit. Registrants must agree among themselves as to the portion each will be responsible for and indicate the same on their application.

2-0509. **SUPPLEMENTARY APPLICATIONS.**

1. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do work outside the area specified in the permit, except as provided herein. Any permittee who determines that an area is greater than that specified in the permit granted must, before working in the greater area (a) make application for a permit extension and pay any additional fees required thereby, and (b) be granted a new permit or permit extension.
2. A right-of-way permit is valid only for the dates specified in the permit. No permittee may be its work before the permit start date or, except as provided

herein, continue working after the end date. If permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date.

2-0510. **DENIAL OF PERMIT.** The Director may deny a permit for failure to meet the requirements and conditions of this chapter, or if the Director determines that denial is necessary to protect the health, safety, and welfare of the public, or when necessary to protect the right-of-way and its current use.

2-0511. **INSPECTION.**

1. When the work under any permit hereunder is completed, the permittee shall provide written notice of completion to the Director.
2. Permittee shall make the work-site available to the Director and to all others as authorized by law for inspections at all reasonable times during the execution of and completion of the work.
3. The Director shall have the authority to do the following:
 - a. At the time of inspection, the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
 - b. The Director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation will be a cause for revocation of the permit. Within ten (10) days after the issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Section 2-0516.

2-0512. **REVOCATION OF PERMITS.**

1. The City reserves its rights, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach

by permittee shall include, but shall not be limited to, the following:

- a. The violation of any material provision of the right-of-way permit;
 - b. An evasion or attempt to evade any material provision of the right-of-way permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
 - c. Any material misrepresentation of fact in the application for a right-of-way permit;
 - d. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete the work is due to reasons beyond the permittee's control; or
 - e. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 5-0515.
2. If the Director determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the Director shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the Director, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
 3. Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the Director with a plan, acceptable to the Director, that will cure the breach. Permittee's failure to so contact the Director, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of permit.
 4. If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

2-0513. **MAPPING DATA.** Each owner of utilities in the right of way in West Fargo must provide mapping information required by the Director. Mapping data shall generally consist of drawing exhibits showing all existing aboveground and underground facilities and proposed location of new facilities. Drawings shall

be submitted in AutoCAD DWG or DXF digital format and in hard copy. All drawings shall be registered to the City's coordinate system, or if the City does not have a separate coordinate system, the North Dakota State Plan, and certified by a registered land surveyor or professional engineer. In regard to existing facilities, the required mapping information must be provided within one year of the written request for such information by the Director. Failure to provide such information in the time required, shall subject the violator to administrative fines in the amount of \$500 a day until the violator is in compliance. In addition, no permit will be granted to the violator, or to a contractor doing work for the violator until the violator is in compliance with this section.

2-0514. LOCATION OF FACILITIES.

1. Unless otherwise permitted by an existing franchise or North Dakota law, or unless existing aboveground facilities are repaired or replaced, new construction and the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable code.
2. The Director may assign specific corridors within the right-of-way or any particular segment thereof as may be necessary, for each type of facilities that is, or pursuant to current technology, the Director expects will someday be located within the right-of-way. All permits issued by the Director involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. A five foot clear zone shall be maintained on each side of the City sanitary sewer, storm sewer and water main utilities.
3. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the Director shall, not later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived in writing by the Director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.
4. To protect the health, safety and welfare or, when necessary, to protect the right-of-way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within a right-of-way. In making such decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by

considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

2-0515. **RELOCATION OF FACILITIES.** A registrant must promptly, and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the Director for good cause requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The Director may make such requests to prevent interference by the company's equipment or facilities with (a) a present or future City use of the right-of-way, (b) a public improvement undertaken by the City, (c) an economical development project in which the City has an interest or investment, (d) when the public health, safety and welfare of the public require it, or (e) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a person shall not be required to move or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until reasonable costs thereof are first paid by the non-governmental entity requesting the vacation.

2-0516. **DAMAGE TO OTHER FACILITIES.** When the Directors does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the Director shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to the registrant and must be paid within thirty (30) days from the date of the billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each registrant shall be responsible for the cost of repairing any damage to the facilities of any other registrant caused during the City's response to an emergency occasioned by that registrant's facilities.

2-0517. **RIGHT-OF-WAY VACATION.**

1. If the City vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant's or permittee's facilities, the City shall reserve, to and for itself and all registrants having facilities in the vacated right-of-way, the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

2. If the vacation requires the relocation of registrant's or permittee's facilities and (a) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the City and the registrant or permittee; or (c) if the vacation proceedings are initiated by a person or persons other than the registrant or permittee, such other person or persons must pay the relocation costs.

2-0518. **EXCAVATION MORATORIUM.** No excavation requiring a permit will be allowed within 36 months of the completion of construction of a roadway. Additionally, no excavation will be allowed on any roadway within 24 months following any of the following activities: overlay, mill and overlay, chip seal, or slurry seal without written authorization from the Public Works Director.

2-0519. **EMERGENCY EXCAVATION.** Nothing in this ordinance shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making repairs, provided that the person making such excavation shall apply to the Public Works Director for such a permit on the first working day after such work is commenced.

2-0520. **PRESERVATION OF MONUMENTS.** Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a survey reference point, or a permanent survey bench mark, shall not be removed or disturbed without first obtaining permission in writing from the Public Works Director. Permission to remove or disturb such monuments, reference points or bench marks shall only be granted upon condition that the person applying for such permission shall pay all expenses incident to the proper placement of this monument by the Public Works Director or registered land surveyor. Any person or entity removing or disturbing such monuments without permission shall be responsible for any costs associated with replacing the monuments, as well as a \$500 administrative penalty.

2-0521. **INSPECTIONS.** The provisions of this chapter do not relieve or change any other inspection requirements contained in the City ordinances or in any rules and regulations as approved by the Board of City Commissioners.

2-0522. **REGULATIONS.** The Public Works Director is hereby authorized and directed to promulgate rules and regulations setting forth the requirements for excavation protection, backfilling and restoration, and related matters, to prepare the necessary related forms, and to issue such permits in compliance with this chapter.

2-0523. **SEVERABILITY.** If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

2-0524. **PENALTY.**

1. Every person, firm or corporation violating this ordinance shall, upon conviction thereof, be punished by a fine not to exceed \$500, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.
2. The City shall further have the right and authority to deny, suspend or revoke the registration or permit of every person violating this chapter.

2-0525. **APPEAL.**

1. A right-of-way user that (a) has been denied registration; (b) has been denied a permit; (c) has had a permit revoked; or (d) believes that the fees imposed are invalid, may have that denial, revocation, or fee imposition reviewed, upon written request by the City Commission. The City Commission shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Commission affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.
2. Upon confirmation by the City Commission of the denial, revocation, or fee imposition, the right-of-way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the City Commission and the right-of-way user. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the City, one arbitrator selected by the right-of-way users, and one selected by the other two arbitrators. The costs and fees of a single arbitrator shall be borne equally by the City and right-of-way user. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other part of the expense of the third arbitrator and the arbitration.

CHAPTER 2-06

STREET RESEALING PROGRAM

SECTIONS:

- 2-0601. Street Resealing Special Fund.
 - 2-0602. Street Resealing Plan.
 - 2-0603. Expenditure of Funds.
 - 2-0604. Definition of Resealing Costs.
 - 2-0605. Obligation of City.
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2-0601. STREET RESEALING SPECIAL FUND. The City does hereby create a special fund to be designated as the Street Resealing Special Fund. Into this fund the City Auditor shall place all funds which are in the 1977 Series B Refunding Bond Fund at the time the dedication of those funds is released by the payment of the last of the 1977 Series B Refunding Bonds, as well as any funds that come into the 1977 Series B Refunding Bond Fund after that date. The funds shall be invested as other City funds, and all interest earned on those funds shall be retained in the Street Resealing Special Fund. The City Commission may, but is not obligated to, place any other funds into the Street Resealing Special Fund. No funds placed into the Street Resealing Special Fund may be expended except for purposes set out in this chapter.

2-0602. STREET RESEALING PLAN. The City Engineer shall prepare a plan for systematically resealing the streets within the City limits of West Fargo. Such plan shall be approved by the City Commission by resolution, and such plan may be amended or extended from time to time as long as the amendment or extension is approved by resolution of the City Commission. Provided, however, that the resealing done as part of Street Improvement District No. 2067 shall automatically be considered a part of the plan for which funds may be disbursed pursuant to this chapter.

2-0603. EXPENDITURE OF FUNDS. Monies in the Street Resealing Special Fund may only be expended on "resealing costs" of projects which are part of the plan prepared by the Engineer pursuant to Section 2-0602. Provided, however, that the maximum sum of money that may be expended from the Street Resealing Special Fund for any project shall not exceed \$300,000. There shall be no more than one project undertaken pursuant to this chapter in any one calendar year. For each project, the City Engineer shall determine if other street work or repair is needed in the area where the resealing is to occur. If the "resealing costs" exceed \$300,000 and/or there are other non-resealing costs involved in the project, the City shall create an improvement district, and those costs in excess of \$300,000 and/or other costs shall be assessed against the benefited property. If the project is protested out, then the resealing of

the streets in that district shall not proceed until a later street improvement project is approved.

2-0604. DEFINITION OF RESEALING COSTS. For purposes of this chapter, "resealing costs" means the construction costs directly related to resealing streets within the City of West Fargo and related engineering, legal and administrative costs. "Resealing costs" do not include construction costs related to leveling, milling, overlaying the streets, curb and gutter repair, and related items. However, for purposes of this chapter, "resealing costs" will include construction costs of the items set out in the previous sentence, provided that those costs do not exceed 10% of the total cost of the project or \$30,000, whichever is less. Furthermore, on concrete streets, where no resealing is necessary, "resealing costs" will include minor street repair work on those streets as long as the costs of those repairs do not exceed the average cost per square yard of resealing non-concrete streets. If a particular project includes construction costs that are not "resealing costs," then the engineering costs shall be prorated between improvement district costs and costs to the Street Resealing Special Fund based on the same ratio that the construction costs are allocated.

2-0605. OBLIGATION OF CITY. The approval of the plan in Section 2-0602 in no way obligates the City to reseal the streets as set out in that plan. Each year the City Commission, by resolution, shall determine whether or not any construction outlined in the plan will actually be undertaken that year. Furthermore, even if such a resolution is passed, there is still no obligation upon the City if a street improvement district created for the purpose of doing the work is protested out.

2-0606. EXCEPTION FOR OTHER EXPENDITURES. Notwithstanding the provisions of other sections of this chapter, the City, in addition to expenditures permitted elsewhere in this chapter, shall be permitted to expend the following monies from the Street Resealing Special Fund:

1. \$105,000 in the year 1992 for purposes of constructing an addition to the City Shop.
2. To expend a sum of money not to exceed \$100,000 to fund the difference in cost between using concrete, as opposed to asphalt, in Street Improvement District No. 2073 between Main Avenue and 13th Avenue South.
3. The City Commission may, by resolution, use funds from the Street Resealing Fund to meet deficiencies in any assessment bond fund in lieu of levying a deficiency levy.

SOURCE: Ord. 431, Sec. 1 (1992)

4. The City Auditor is authorized to use such funds to pay all or part of the costs of paving 40th Avenue South, west of County Road 17 to the intersection of 9th Street extended.

SOURCE: Ord. 714, Sec. 1 (2004)

5. The City Auditor is authorized to use such funds to pay all or part of the costs of curb repairs and installations in the City of West Fargo.

SOURCE: Ord. 760, Sec. 1 (2005)

TITLE III.

PARKS AND BOULEVARDS

CHAPTERS:

- 3-01. Parks.
- 3-02. Urban Forestry.
- 3-03. Boulevards.

CHAPTER 3-01

PARKS

SECTIONS:

- 3-0101. Acceptance by City of Provisions of State Law.
- 3-0102. Compensation of Park Board Members.

3-0101. ACCEPTANCE BY CITY OF PROVISIONS OF STATE LAW. The provisions of Chapter 40-49 of the North Dakota Century Code, and any amendments thereto, are accepted by the City Commission of the City of West Fargo, it being the intent of the City to have a Park District of the City of West Fargo with all the powers and responsibilities as set out in Chapter 40-49 of the North Dakota Century Code, and all amendments thereto.

Source: Ord. 45, Art. 1 (1956).

3-0102. COMPENSATION OF PARK BOARD MEMBERS. Each duly elected and qualified member of the Board of Park Commissioners shall receive One Hundred Dollars (\$100) per month compensation for their services.

Source: Ord. 232, Sec. 1 (1977); Ord. 477, Sec. 1 (1994).

CHAPTER 3-02

URBAN FORESTRY

SECTIONS:

- 3-0201. Definitions.
 - 3-0202. Administration.
 - 3-0203. City Forester.
 - 3-0204. Nuisances.
 - 3-0205. Removal of Nuisances.
 - 3-0206. Permit for Transporting Firewood.
 - 3-0207. Tree Planting or Tree Trimming Permit.
 - 3-0208. Planting of Trees by City.
 - 3-0209. Tree Topping.
 - 3-0210. Interference Prohibited.
 - 3-0211. Non-Liability of City.
 - 3-0212. Severability.
 - 3-0213. Penalty for Violation.
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3-0201. DEFINITIONS.

- A. "Boulevard" shall mean that strip of land abutting on either side of the streets of the City lying between the outside edge of the sidewalks and the curb along such streets or that area between the inside edge of sidewalks and the lot lines in areas having curb sidewalks.
- B. "City" shall mean the City of West Fargo and shall include all streets, boulevards, alleys, airport, lagoon, parks and other property.
- C. "City Forester" shall mean the City employee appointed or designated by the City Commission to perform the duties set out in this chapter.
- D. "Easement" shall mean a grant by a property owner of the use of a strip of land for such public use as constructing and maintaining utilities, including but not limited to sanitary sewers, water mains, electric lines, telephone lines, television or transmission lines, storm sewer or storm drainage ways, gas lines and roadways.
- E. "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.
- F. "Private property" shall mean such property as is shown by the Cass County, North Dakota, Register of Deeds and the owner thereof.

- G. "Property line" means the outer boundaries of any lot or parcel of land (including boulevard).
- H. "Property owner" shall mean the person owning such property and is shown by the Cass County, North Dakota, Register of Deeds.
- I. "Public property" shall be construed to include right of ways, boulevards, and all property owned and maintained by the City or Park District.
- J. "Public trees" are all shade and ornamental trees now or hereafter growing on any public right of way or in any public place or park.
- K. "Streets" shall mean the entire width between property lines of every way or place of whatsoever nature when any part thereof is open to the use of the public as a matter of right of way for the purpose of vehicular traffic.
- L. "Width of boulevard" means the distance between the sidewalk, or the normal location of the sidewalk, and curb line or curb.

3-0202. ADMINISTRATION.

- A. Urban Forestry Committee. There is hereby created an Urban Forestry Committee to serve without compensation consisting of six members. Appointment shall be by the City Commission with the exception of one member, who shall be appointed by the Park District, for three year terms. One member shall be a member of the City Commission, one from the Park Board or its designee, and four members from the public at large. The City Commission may also appoint ex-officio non-voting members to the committee as they deem advisable. The initial appointments shall be for two members for three years, two members for two years, and two members for one year. As the terms of office expire, the City Commission shall make appointments for three year terms, with the exception that the Park District shall appoint a new member when the term of the member previously appointed by the Park District expires. Any member may resign or be removed for reason by the City Commission. Any member who misses three consecutive meetings and/or six meetings in one calendar year, may be removed by the City Commission through recommendation from the remaining members of the Forestry Committee.
- B. Duties and Purpose of the Urban Forestry Committee. It shall be in the authority of the Urban Forestry Committee

within the limits of the funds at its disposal, to act in an advisory capacity to the Board of City Commissioners and to plan, establish and implement a forestry program. The purpose of the Urban Forestry Committee is to:

1. Promote and provide for immediate and long range resource planning;
2. Establish and provide for rules and regulations relating to planting, maintenance and removal of greenery in the community;
3. Provide education and support for the public and private sectors of the community;
4. Establish and provide for a beautification program for the community;
5. Develop an annual Work Program for forestry in the community for approval by the City;
6. Develop and recommend levels of staffing and funding for forestry needs in the community;
7. Implement the 8th Street Centennial Tree Planting Plan.

To accomplish its purposes, goals and objectives, the Urban Forestry Committee shall make recommendations to the Board of City Commissioners.

3-0203. CITY FORESTER.

- A. The City Commission shall appoint or designate a City employee as the City Forester, who shall have the duties, responsibilities, and authority as set out in Chapter 3-02.
- B. The City Forester shall have the authority and jurisdiction, with the recommendations of the Urban Forestry Committee, to regulate the planting, maintenance, protection, and removal of all trees on streets or other public places, to ensure safety, or preserve the aesthetics of such streets and public places.
- C. The City Forester shall have the authority to make known, with the recommendations of the Urban Forestry Committee, the rules and regulations of the Arboricultural Specifications and Standards of Practice governing the

planting, maintenance, protection, and removal of trees, as specified on the streets and public areas of the City.

- D. The City Forester shall have the authority to supervise all work done under any permit or contract, issued in accord with the terms of this chapter.

3-0204. NUISANCES. The following conditions are public nuisances whenever they may be found in the City:

- A. Any living or standing elm tree or part thereof infected to any degree with the dutch elm disease, fungus, *Ceratocystis ulmi*, and which harbors any of the elm bark beetles, *Scolytus multistriatus*, or *Hylurgopinus rufipes*, or other tree species infected by a disease determined a nuisance by the Urban Forestry Committee.
- B. Planting of disease prone elm trees or other tree varieties as identified by the Urban Forestry Committee shall be prohibited on boulevards, public property, and other city right-of-ways for the purpose of preventing the spreading of disease.
- C. Limbs of trees, shrubs, bushes and plants shall not be less than eight feet above the surface of a sidewalk, if projecting over the sidewalk, nor shall they be less than fourteen feet above the surface of a street or alley, if projecting over the street or alley. Any limbs of trees, shrubs, bushes and plants which are in violation to this provision are hereby declared to be public nuisances.
- D. On corner lots any trees or shrubbery planted or allowed to grow in such a manner as to materially impede vision between a height of 2½ feet and 10 feet above the center line grades of intersecting streets and within thirty feet of the point of curvature of the intersecting street curbs shall be declared a public nuisance.
- E. Any outside storage of wood, including cut trees used for fuel, shall be elevated off the ground at least six (6) inches to provide sufficient clearance for ventilation and to deter infestation and inhabitation by rats and other vermin.
- F. All stumps of elm trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground, or the entire stump shall be stripped of bark upon cutting of the tree.

3-0205. REMOVAL OF NUISANCES. If the City Forester determines that one of the nuisances set out in Section 3-0204 exists within the City, the City Forester shall give notice to remove the nuisance to the proper party pursuant to Section 15-03-12 of the Ordinances of the City of West Fargo. If the nuisance is not abated within the time set forth in the Notice of Nuisance, the City shall have the right and authority to remove the nuisance and assess the costs incurred by the City in the removal of the nuisance pursuant to the provisions of Section 15-0314 of the Ordinances of the City of West Fargo. The City Forester may enter upon private property at any reasonable time for the purpose of determining whether or not a nuisance exists, abating the nuisance according to the provisions of this chapter, and in carrying out any other provisions of this chapter.

3-0206. PERMIT FOR TRANSPORTING FIREWOOD. An annual permit, available from the City Auditor, is required for all firewood transported within the City limits. All firewood consisting of elm shall be debarked prior to transport into and within the City.

3-0207. TREE PLANTING OR TREE TRIMMING PERMIT.

- A. No person, firm or corporation shall hereafter plant or trim, or cause to be planted, any tree, shrub or other vegetable growth within the limits of any street, alley, boulevard or other public way of the City without first having obtained therefor a written permit from the City Auditor. Provided, however, the owner of a lot shall not be required to obtain a permit to trim trees on the boulevard immediately abutting the lot owned by the owner.
- B. Any person, firm or corporation desiring to plant any tree, shrub or other vegetable growth within the limits of any street, alley, boulevard or other public way of the City must first apply to the City Auditor for a written permit therefor. After the receipt of such application, the City Forester shall investigate the locality where the tree, shrub or other vegetable growth is to be placed. The permit shall be granted only if the location is such as to allow the normal growth and development of such tree, shrub or other vegetable growth and is consistent with the public safety and welfare. the permit shall be in writing, shall specify the location, the variety of trees, shrub or vegetable growth, and the method of planting, and shall be good only for the season stated on the same in the year issued, and no charge shall be made for such permit. In addition, such trees shall meet the requirements set out in Section 4-532 of the Ordinances of the City of West Fargo.

- C. In cases where building permit applications are involved for residential construction or for construction on lots abutting 13th Avenue East, a tree planting fee shall be paid to the City of West Fargo prior to the issuance of the permit as provided in Section 4-532 of the Ordinances of the City of West Fargo. In addition, the size and other regulations relating to the trees as set out in Section 4-532 must be followed.
- D. Any person, firm or corporation desiring to trim any tree, shrub or other vegetable growth within the limits of any street, alley, boulevard or other public way of the City must first apply to the City Auditor for a written permit therefor. A permit shall not be required of the owner of the property which abuts that portion of the public way upon which the growth is located. After the receipt of such application, the City Forester shall investigate the locality of the tree, shrub or other vegetable growth that is intended to be trimmed. The permit shall be in writing, shall specify the location, the variety of trees, shrub or vegetable growth, and the method of trimming, and shall be good only for the season stated on the same in the year issued, and no charge shall be made for such permit. In the event an emergency exists, the emergency condition may be resolved without a permit, but a report must be filed with the City Auditor relating to the emergency work completed within one working day, and a permit must be received for any additional work to be done not of an emergency nature.

Source: Ord. 432, Sec. 1 (1992).

3-0208. PLANTING OF TREES BY CITY. In order to secure uniform and continuous planting of trees along such streets and avenues as shall be designated by the Board of City Commissioners, said Board of City Commissioners may, upon the petition of not less than forty percent (40%) of the property owners along such street or avenue, order the planting of trees under the provisions in the Revised Ordinances of 1990 of the City. The cost of such a project shall be determined through competitive bidding practices and shall be borne by the property owners either through direct payment or special assessment.

3-0209. TREE TOPPING. It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or other tree on public property or dedicated utility easements. Topping is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

3-0210. INTERFERENCE PROHIBITED. It shall be unlawful for any person to prevent, delay, or interfere with the Urban Forestry Committee, City Forester, or any City employee while engaged in the performance of the duties set out in this chapter.

3-0211. NON-LIABILITY OF CITY. Nothing in this chapter shall be deemed to impose any liability upon the City or upon any of its officers or employees nor to relieve the owner of any private property from the duty to keep trees and shrubs upon private property or under their control in a safe condition.

3-0212. SEVERABILITY. Should any part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be invalid.

3-0213. PENALTY FOR VIOLATION. Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211 of the Ordinances of the City of West Fargo. Each day such violation continues shall be considered a separate offense.

Source: Ord. 410, Sec. 2 (1991)

CHAPTER 3-03

BOULEVARDS

(Ord. 599, Sec. 1 (2000))

Sections:

- 3-0301. Definitions.
 - 3-0302. Prohibited Acts or Encroachments.
 - 3-0303. Permits.
 - 3-0304. Driving on Sidewalk or Boulevard.
 - 3-0305. Care of Boulevard.
 - 3-0306. Penalty.
 - 3-0307. Placement of Mail Boxes. (Ord. 712, Sec. 1 - 2004)
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3-0301. DEFINITIONS.

1. "Boulevard" or "Berm" shall mean that area of ground between the roadway and the sidewalk or, if there be no sidewalk, it is the area of the ground between the roadway and the dedicated limits of the street or avenue.
2. "Roadway" shall mean that portion of the street or avenue improved, designed or ordinarily used for vehicular travel.

3-0302. PROHIBITED ACTS OR ENCROACHMENTS.

1. Parking: No person shall stop, stand or park a motor vehicle, whether attended or unattended, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, upon a sidewalk or boulevard.
2. Signs: Any sign or signs or billboard, except official or quasi-official signs, standing or erected upon a boulevard is a public nuisance and may be abated by removing the sign.
3. Buildings: No person shall erect or cause to be erected or permit any building or structure to stand upon the boulevard, other than a mailbox.
4. It is prohibited to store any equipment, building materials, inventory, or any other material upon the boulevard.

3-0303. PERMITS. Nothing herein shall prohibit the parking of motor vehicles upon the sidewalk or boulevard, the erection of signs or billboards upon the boulevard, the maintaining of a building or structure upon the boulevard, or the storage of equipment, material or inventory upon the boulevard if written application is made to the City Commission requesting the privilege of parking motor vehicles upon the sidewalk or boulevard, the erection of signs or billboards upon the boulevard, the maintaining

of a building or structure upon the boulevard, or the storage of equipment, inventory or equipment upon the boulevard, and the City Commission grants such permission by resolution.

3-0304. DRIVING ON SIDEWALK OR BOULEVARD. No person shall drive any vehicle over, across or upon any sidewalk, curb or boulevard except where there are driveway crossings. Provided, however, the owner or occupant or his agents or employees may drive over the same temporarily when necessary to obtain access to the premises if permission to do so is first obtained from the Public Works Director of the City. The Public Works Director, in granting such permission, may require protective measures to protect the curb, sidewalk, and boulevard, which protective measures must be removed immediately after such temporary use.

3-0305. CARE OF BOULEVARD. It shall be the responsibility of the abutting property owner to seed or sod the boulevard. No gravel, pavement, or other hard surface may be placed on the boulevard except for a driveway or sidewalk. No tree, shrub, or other plant or vegetable growth may be planted within the boulevard without a permit issued pursuant to Section 3-0207 of the West Fargo City Ordinances. Provided, however, that a person or entity desiring to place gravel, pavement or other prohibited material in the boulevard may make written application to the City Commission, and the City Commission, by resolution, may approve such request when the City determines that it is in the best interest of the City to do so or where there is some other extenuating circumstance which would make the planting or maintaining of grass difficult or inappropriate.

3-0306. PENALTY. A violation of this chapter may be punishable as an infraction as set forth in Section 1-0211 of the West Fargo City Ordinances.

3-0307. PLACEMENT OF MAIL BOXES. The City Commission shall have the authority to control the placement of mail boxes on City boulevards and right of ways whether or not mail boxes have been existing on such boulevards and right of ways in the past. Such authority shall include but not be limited to requiring mail boxes to be placed only on one specified side of a street, or requiring combined mail boxes at one location to serve multiple residences, or requiring temporary placement of mail boxes during periods of heavy construction. In developing such requirements for individual neighborhoods, the City should coordinate with the U. S. Postal Service, as well as the residents effected so as to improve mail delivery, improve parking conditions, and alleviate problems that have occurred in the past in a particular neighborhood.

Source: Ord. 712, Sec. 1 (2004)

TITLE IV.

PLANNING - ZONING

CHAPTERS:

- 4-01. Planning Commission - Zoning Commission.
- 4-02. Comprehensive Plan.
- 4-03. **Reserved for Future Use.**
- 4-04. Subdivision Regulations.

ZONING REGULATIONS

- 4-100. General Provisions.
- 4-200. Definitions.
- 4-300. Establishment of Districts and Official Zoning Map.
- 4-400. Regulations.
- 4-500. Administration and Enforcement.

CHAPTER 4-01

PLANNING COMMISSION - ZONING COMMISSION

SECTIONS:

- 4-0101. Planning Commission: Creation.
- 4-0102. Planning Commission: Members Appointed.
- 4-0103. Planning Commission: Term of Office.
- 4-0104. Planning Commission: Confirmation of Appointments by City Commission.
- 4-0105. Planning Commission: Powers and Compensation.
- 4-0106. Zoning Commission.
- 4-0107. Extraterritorial Planning and Zoning Authority.

4-0101. PLANNING COMMISSION: CREATION. Pursuant to Chapter 40-48 of the North Dakota Century Code and all previously existing ordinances of the City of West Fargo, there shall be a body known as the Planning Commission of the City of West Fargo. The creation of said commission is hereby confirmed and ratified.

4-0102. PLANNING COMMISSION: MEMBERS APPOINTED. The Planning Commission shall consist of eight (8) members, who shall be appointed as hereinafter provided. In addition to the appointed members, the President of the Board of City Commissioners, the City Engineer and the City Attorney shall act as ex-officio members of said Planning Commission.

Source: Ord. 924, Sec. 1 (2012)

4-0103. PLANNING COMMISSION: TERM OF OFFICE. The ex-officio members of the Planning Commission shall serve during and for their respective terms for which they are elected or appointed, the President of the Board of City Commissioners shall appoint five (5) members of the Planning Commission, which appointments shall be confirmed as hereinafter provided, The members appointed by the President of the Board of City Commissioners shall be a resident of the City of West Fargo. The terms of the members of the Planning Commission appointed by the President of the Board of City Commissioners shall be as provided by the laws of the State of North Dakota. The Board of County Commissioners of Cass County shall appoint three members of the Planning Commission, who shall reside outside of the corporate limits of the City of West Fargo, Cass County, North Dakota, but who shall reside within four miles of the corporate limits of the City of West Fargo, Cass County, North Dakota, in any direction, and if such persons are available and will serve on the Planning Commission, they should reside within the area within which the City exercises its extraterritorial zoning jurisdiction. Of the members of the commission appointed by the Board of County Commissioners of Cass

County, North Dakota, the first member appointed shall hold office for five (5) years, the second member appointed shall hold office for three (3) years, and thereafter, the members shall be appointed for terms of five (5) years.

Source: Ord. 924, Sec. 2 (2012)

4-0104. PLANNING COMMISSION: CONFIRMATION OF APPOINTMENTS BY CITY COMMISSION. The President of the Board of City Commissioners shall submit to the Board of City Commissioners at the next regular meeting after making such appointments, the names of the persons appointed and the length of their term. The Board of City Commissioners shall, by a majority vote, confirm or reject such appointments. If such appointments are rejected, the President of the Board of City Commissioners shall make other appointments, which appointments shall be approved or rejected in like manner.

4-0105. PLANNING COMMISSION: POWERS AND COMPENSATION. The Planning Commission shall have such powers and shall perform such duties as may now or hereinafter be provided by law including the power under the authority of Section 40-48-18 of the North Dakota Century Code to extend the application of the City's subdivision regulations to all land located within the corporate limits of the City and all land located within the extraterritorial authority of the City as set forth in Section 4-0107.

Source: Ord. 414, Sec. 1 (1991)

4-0106. ZONING COMMISSION. The Planning Commission shall also serve as the Zoning Commission of the City to hold hearings, make reports and recommendations as to the boundaries of the various original districts and appropriate regulations to be enforced therein, and for changes in or supplements thereto. The Zoning Commission shall have such powers and shall perform such duties as may now or hereafter be provided by law including but not limited to the exercise of territorial authority of zoning regulations extending to all land located within the corporate limits of the City and all land located within the extraterritorial authority of the City as set forth in Section 4-0107.

4-0107. EXTRATERRITORIAL PLANNING AND ZONING AUTHORITY. The City of West Fargo pursuant to the authority set out in Sections 40-48-18 and 40-47-01.1 of the North Dakota Century Code, does hereby extend its planning and zoning regulation authority to those extraterritorial areas set forth on the map entitled "The official zoning map of the City of West Fargo," dated March 16, 2015. The boundaries of the extraterritorial planning and zoning authority of the City of West Fargo, North Dakota, shall not automatically change as a result of annexation of new land into the City, or by amendments to state law which would permit the City to extend its extraterritorial jurisdiction a greater distance from its city limits. The City may, in its discretion, extend the

extraterritorial planning and zoning authority of the City of West Fargo and the planning commission by amending the Official Map to take in additional territory that, pursuant to state law, may come under the planning and zoning authority of the City.

Source: Ord. 414, Sec. 5 (1991); Ord. 655, Sec. 1 (2002); Ord. 795, Sec. 2 (2007); Ord. 1031, Sec. 2 (2015)

CHAPTER 4-02

COMPREHENSIVE PLAN

SECTIONS:

- 4-0201. Declaration of Purpose.
- 4-0202. Adoption of Official Comprehensive Plan.
- 4-0203. Copy on File with City Auditor.
- 4-0204. Amendments to Land Use Plan.

4-0201. DECLARATION OF PURPOSE. The purpose of this chapter in establishing an official Comprehensive Plan is to accomplish a coordinated, adjusted and harmonious development of the City of West Fargo and its environs, and generally to conserve and promote the public health, safety and general welfare of the municipality.

4-0202. ADOPTION OF OFFICIAL COMPREHENSIVE PLAN. The West Fargo Comprehensive Plan shall consist of the 2007 Comprehensive Plan adopted by the City Commission on December 17, 2007.

Source: Ord. 584, Sec. 1 (2000); Ord. 813, Sec. 1 (2007).

4-0203. COPY ON FILE WITH CITY AUDITOR. A copy of the Comprehensive Plan of the City of West Fargo shall be kept on file at all times with the City Auditor.

4-0204. AMENDMENTS TO LAND USE PLAN. All amendments to the Land Use Plan of the West Fargo Comprehensive Plan shall be as set forth by Resolution and adopted by the West Fargo City Commission.

Source: Ord. 650, Sec. 1 (2002)

CHAPTER 4-03

RESERVED FOR FUTURE USE

CHAPTER 4-04

SUBDIVISION REGULATIONS

SECTIONS:

- 4-0401. Introductory Provisions.
 - 4-0402. Definitions.
 - 4-0403. General Provisions
 - 4-0404. Subdivision Application Procedure and Approval Process.
 - 4-0405. Document Specification Requirements.
 - 4-0406. Subdivision Design and Improvement Standards.
 - 4-0407. Public Sites and Uses.
 - 4-0408. Extraterritorial Provisions.
 - 4-0409. Subdivision Improvement Agreements. (Ord. 860, Sec. 1 [2010])
-

4-0401. INTRODUCTORY PROVISIONS.

Subsections:

- 4-0401.1. Title.
 - 4-0401.2. Purpose.
 - 4-0401.3. Legal Authority.
 - 4-0401.4. Provisions of Ordinance Declared to be Minimum Requirements.
 - 4-0401.5. Severability.
 - 4-0401.6. Amendments to Regulations.
 - 4-0401.7. Conditions Imposed Upon Subdivision Plats.
 - 4-0401.7. Penalties for Violation. (Ord. 748, Sec. 2 - 2005)
-

4-0401.1. TITLE. These regulations shall be known, cited, and referred to as "The Subdivision Regulations of the City of West Fargo, North Dakota."

4-0401.2. PURPOSE. It is the purpose of these regulations:

- A. To provide for the proper arrangements of streets in relation to other existing and planned streets and to City Plans; and
- B. To provide for adequate and convenient open spaces for traffic, utilities, access of emergency vehicle apparatus, recreation, light, and air, for the avoidance of congestion of population, and for easements for building setback lines or for public utility lines; and

- C. To establish reasonable standards, designs, and procedures for land subdivisions in order to further beneficial planning of the City and to insure proper legal descriptions of land; and
- D. To insure that adequate public facilities and necessary public improvements are available and will have sufficient capacity to serve the subdivision; and
- E. To encourage the wise use and management of natural resources throughout the municipality in order to preserve the integrity, stability, and beauty of the City and the value of its land; and
- F. To prohibit land subdivision of such character where the land cannot be used safely for building purposes without danger to health or peril from fire, flood, or other menace; and
- G. To promote and protect the provisions of public health, safety, and general welfare; and
- H. To complement and enforce the provisions contained in the Zoning Ordinance, City Plans, and building and housing codes; and
- I. To promote energy conservation and the use of renewable energy resources through energy efficient land use patterns, solar energy use, and other energy efficient techniques.

4-0401.3. LEGAL AUTHORITY.

- A. The City of West Fargo shall have jurisdiction over the subdivision of land (as defined herein) within the limits established by Section 4-0107.
- B. Land shall not be subdivided within the jurisdiction of the City of West Fargo until:
 - (1) The subdivider or his agent has complied with the stated procedures required under these regulations necessary to review such land subdivision.
 - (2) The subdivider or his agent has established that the land to be subdivided and subsequently developed will be in compliance with the Zoning Regulations of the City of West Fargo.
 - (3) The subdivider or his agent obtains approval of the preliminary and final plat by the Planning Commission and the City Commission of West Fargo. The approved plat shall then be recorded with the County Register of Deeds.

4-0401.4. PROVISIONS OF ORDINANCE DECLARED TO BE MINIMUM REQUIREMENTS. The provisions of these regulations shall be held to be the minimum requirements adopted for the promotion of public health, safety and general welfare. Whenever the requirements of these regulations are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances of the State of North Dakota or City of West Fargo, the most restrictive or that which imposes the higher standards, shall govern.

4-0401.5. SEVERABILITY. If any section, provision, or portion of this ordinance is adjudged invalid by any court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

4-0401.6. AMENDMENTS TO REGULATIONS. For the purpose of providing for the public health, safety, and general welfare, the City of West Fargo may from time to time amend the provisions imposed by these subdivision regulations. Public hearings on all proposed amendments shall be held by the Planning and Zoning Commission and City Commission in accordance with the procedures contained herein and state law.

Source: Ord. 748, Sec. 1 (2005)

4-0401.7. CONDITIONS IMPOSED UPON SUBDIVISION PLATS. Subdivision regulations and the attachment of reasonable conditions to land subdivisions are valid exercises of the police power delegated by the State of North Dakota to the City of West Fargo. The developer or subdivider has the duty of compliance with the conditions laid down by the planning or City Commission.

4-0401.8. PENALTIES FOR VIOLATION. Any owner, or agent of any owner, of land located within an subdivision who transfers, sells, any such land by reference, to or exhibition of a plat of a subdivision, or by any other use thereof, before such plat has been approved by the Planning and Zoning Commission and governing body and recorded as approved in the office of the appropriate County Recorder, shall forfeit and pay a penalty as provided by Section 40-48-23 of the North Dakota Century Code (One Hundred Dollars [\$100.00] for each lot or parcel transferred or sold or agreed or negotiated to be sold). The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies provided in this section. The municipality may enjoin such transfer, sale or agreement by an action for injunction, or it may recover the penalty by civil action.

Source: Ord. 748, Sec. 2 (2005)

4-0402. DEFINITIONS.

Subsections:

- 4-0402.1. General Usage.
- 4-0402.2. Definitions.

4-0402.1. GENERAL USAGE.

- A. Words within these regulations shall be used, interpreted, and defined as presented in this chapter.
- B. The word "City" shall mean the City of West Fargo, North Dakota.
- C. The word "shall" is mandatory and the words "may" or "should" are permissive.
- D. The words "subdivider," "developer," "applicant," "person," and "owner" include an individual, a corporation, an unincorporated association, a partnership, or other legal entities.
- E. Anything not specifically included in a definition is automatically excluded.
- F. In the event of conflicting provisions in the meanings of any words in these regulations, the most restrictive or that which imposes a higher standard shall govern.
- G. Any definition not found in these regulations, and found in the Zoning Ordinance Definitions, shall have the same meaning as defined in the Zoning Ordinance.

4-0402.2. DEFINITIONS.

Abutting - To physically touch or border upon; or to share a common property line. Also ADJACENT LAND.

Access - A way or means of approach to provide physical entrance to a property.

Alleys. Minor public ways which are used primarily for vehicular service access to the back or side of properties otherwise abutting on a street.

Source: Ord. 808, Sec. 1 (2007)

Applicant - The person(s) submitting the application for subdivision.

Application to Subdivide - The application form and all documents and exhibits required of an applicant by the Planning Commission for subdivision review purposes.

Area Sketch Plan - A rough map of a proposed subdivision and its adjacent land area of sufficient accuracy to be used for the purpose of discussion and classification. See Figure 5, page 22.

Block - A unit of land bounded by streets or by a combination of streets and public lands, railroad right-of-way, water-ways or any other barrier to the continuity of development. See Figure 3, page 8.

Buffer Strip - Land area used to visibly separate one use from another or to shield or block noise, lights, or other nuisances. Also SCREENING. See Figure 1.

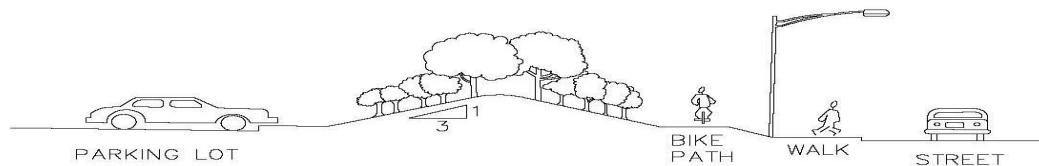


FIGURE 1. BUFFER STRIP

Building Line - That line that is the required minimum distance from the street right-of-way line or any other lot line that establishes the area within which the principal structure must be erected or placed. Also SETBACK LINE. See Figure 2.

Building Permit - Written permission issued by the Building Inspector for the construction, repair, alteration or addition to a structure.

Central Sewerage System - A community sewer system including collection and treatment facilities established to serve a new subdivision in the extraterritorial area.

Central Water System - A private water company formed to serve a new development in the extraterritorial area including water treatment and distribution facilities.

City Commission - The City Commission of the City of West Fargo.

Collector - See STREET, COLLECTOR.

Cul-de-sac - See STREET, CUL-DE-SAC.

Dead-End - See STREET, DEAD-END.

Developer - The person proposing to develop the land either as the owner or as an agent of such owner.

Drainage Plan - The plan of the subdivision showing the direction of surface water runoff and the removal of surface water or groundwater by drains, grading, runoff controls, or other means.

Dwelling Unit - One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

Easement - A grant of one or more of the property rights by the property owner to and/or for the use by the public, a corporation or entity.

Excavate - Removal of soil, rock, or organic substances from land for building purposes.

Grading - Any stripping, cutting, filling, stockpiling of earth or land, including the land in its cut or filled condition.

Final plat - See PLAT, FINAL.

Improvement, Public - Any street, tree, sidewalk, lot improvement or other facility for which a governmental unit may ultimately assume responsibility for maintenance and operation.

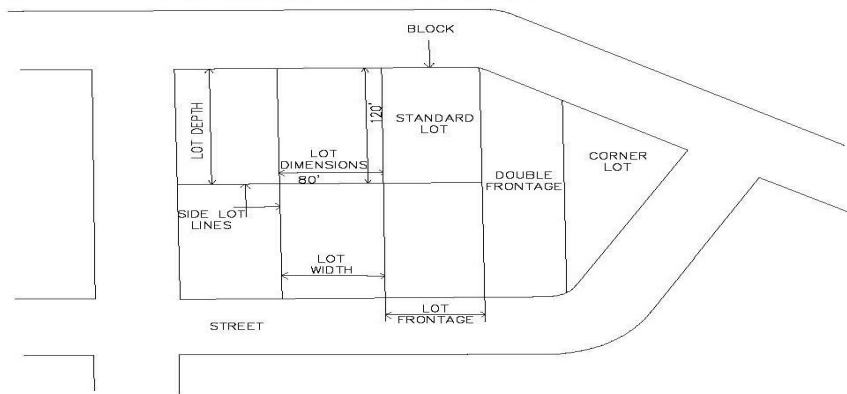
Individual Sewage Disposal System - A privately owned and maintained system for the disposal of sanitary sewage in the ground, which is so designed, constructed, and approved as to treat sewage in a manner that will retain most of the settleable solids in a septic tank and discharge the liquid portion to an adequate disposal field.

Land Use - A description of how land is occupied or utilized.

Local Street - See STREET, LOCAL.

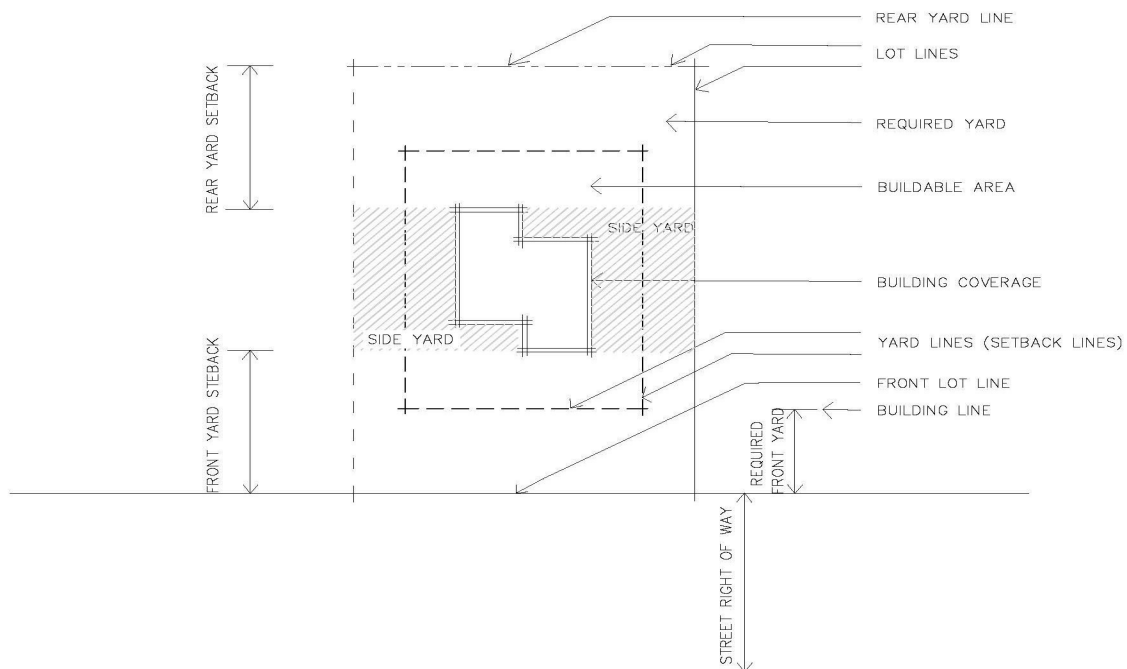
Lot - A designated parcel, tract or area of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed or built upon as a unit. See Figure 3.

FIGURE 3. LOTS AND BLOCKS



Lot Dimensions - The measurement of a lot expressed in feet to include yard setbacks, lot width and depth and other features necessary to insure lot and building compliance with the Zoning Ordinance. See Figure 2.

FIGURE 2. LOT DIMENSIONS



Lot, Double Frontage - A lot, other than a corner lot, which fronts upon two streets. See Figure 3.

Metes and Bounds - A method of describing the boundaries of land by directions and distances from a known point of reference.

Minor Subdivision - See SUBDIVISION, MINOR.

Major Subdivision - See SUBDIVISION, MAJOR.

Official Map - A legally adopted map that shows the proposed location and width of proposed streets, highways, public facilities, public areas, and drainage right-of-ways, including subdivision plats approved by the City Commission and the subsequent filing of such approved plats.

Official Plans - Any adopted document approved by the City Commission, including any amendments or additions thereof, detailing the future course of development for the City.

Placement of Mail Box Plan - A plan setting out the placement of mail boxes either individually or as combined units to serve the property in the plat.

Source: Ord. 712, Sec. 2 (2004)

Planning Commission - The Planning and Zoning Commission of the City of West Fargo.

Plat - A map of a subdivision showing the boundaries, dimensions, and locations of individual properties and streets which has been approved by the City of West Fargo and recorded with the Cass County Register of Deeds.

SOURCE: Ord. 501, Sec. 1 (1996).

Plat, Preliminary - A preliminary map indicating the proposed layout of the subdivision which is presented to the Planning Commission for consideration and preliminary approval.

Plat, Final - The final map of subdivision which is presented to the City Commission for final approval.

Primary Arterial - See STREETS, PRIMARY ARTERIAL.

Restrictive Covenant - A restriction on the use of land usually set forth in the deed.

Resubdivision - A change in an approved and recorded subdivision plat, but not including conveyances made so as to combine existing lots by deed or other instrument.

Right-of-Way - A strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied or occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, waterline, sanitary sewers and other similar uses. See Figure 2.

Setback Line - See BUILDING LINE.

Site Plan - The development plan of the subdivision showing the existing and proposed conditions on the lots including: streets, lots, means of ingress and egress, landscaping,

sidewalks, buildings, lot and building dimensions, screening devices; any other information that reasonably may be required in order that an informed decision can be made by the Planning Commission. See Figure 6.

Solar Access - A property owner's right to have the sunlight shine on his land.

Street - An open way for vehicles and pedestrians constructed for the use of the public.

Street, Collector - A street which collects traffic from local streets and connects with minor and primary arterials. See Figure 4.

Street, Cul-de-sac - A street with a single common ingress and egress and with a turnaround at the end. See Figure 4.

Street, Dead End - A street with a single common ingress and egress. See Figure 4.

Street, Half - A public street where only half the required right-of-way width is shown on the subdivision plat.

Street, Local - A street designed to provide vehicular access to abutting property and to discourage through traffic. See Figure 4.

Street, Loop - A local street which has its only ingress and egress at two points of the same collector street. See Figure 4.

Street, Minor Arterial - A street with signals at important intersections and stop signs on the side streets, and which collects and distributes traffic to and from collector streets. See Figure 4.

Street, Primary Arterial - A major street intended to move through traffic to and from major facilities and also distributes traffic to and from minor arterials. Primary arterials shall also include routes which carry traffic between communities or which provides ingress into egress out of communities. See Figure 4.

Street, Service - A street running parallel to a primary arterial and servicing abutting property. See Figure 4.

Subdivider - Any person having an interest in land that is the subject of an application for subdivision. See APPLICANT.

Subdivision - The division of a lot, tract, or parcel of land into two or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creating of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or

from such lots, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

Source: Ord. 501, Sec. 1 (1996).

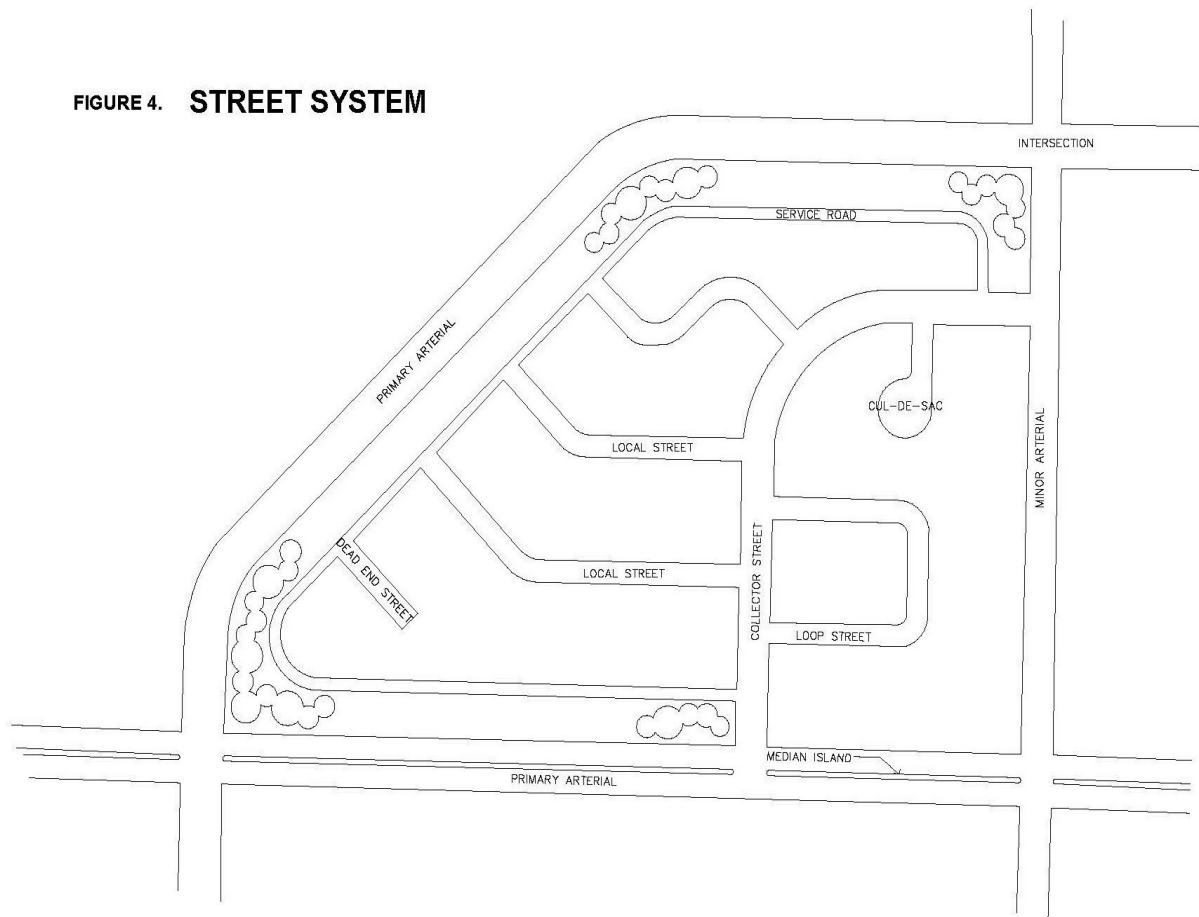
Subdivision, Major - Any subdivision not classified as a minor subdivision.

Subdivision, Minor - A subdivision of land that does not include any of the following: (1) six or more single family lots; (2) high density residential; commercial, or industrial lots; (3) a planned unit development; (4) a new street; (5) possible adverse effects on adjoining property; and (6) conflicts with any provisions of official city maps, plans, the Zoning Ordinance, or these regulations.

Variance - Permission to depart from the literal requirements of these regulations.

Zoning Ordinance - The Zoning Ordinance of the City of West Fargo.

FIGURE 4. STREET SYSTEM



4-0403. GENERAL PROVISIONS.

Subsections:

- 4-0403.1. Transfer of Lots and Splitting of Land.
 - 4-0403.2. Variances.
 - 4-0403.3. Resubdivision of Land.
 - 4-0403.4. Schedule of Fees, Charges and Expenses.
 - 4-0403.5. Retracement Plats.
-

4-0403.1. TRANSFER OF LOTS AND SPLITTING OF LAND.

A. LAND SPLITS. Land splits, by deed or otherwise, shall be required to have subdivision review and shall be in conformance with the provisions stated in these regulations. No building permit shall be issued on land divided or split other than in conformity with the provisions of this chapter. Exceptions to subdivision review for transfers of property are only as follows:

- 1. A division of land which may be ordered or approved court or affected by testamentary or intestate provisions;
- 2. A division of land for use as right-of-way for municipal public facilities which do not involve any new streets or easements of access;
- 3. A division of land made to correct errors in prior divisions pursuant to Chapter 40-50.1, N.D.C.C.;
- 4. A division of land into lots, tracts, or parcels of ten (10) acres or more in size for the purpose of agricultural use which does not involve any new streets or easements.
- 5. A division of land into lots, tracts, parcels in which one lot, tract, or parcel has existing a single family residential district dwelling and the other lot(s), tract(s), or parcel(s) is/are also exempt by the previous stated exemptions.

B. SIMPLE LOT SPLITS. Simple lot splits may be exempt from the platting provisions provided in this chapter provided the following conditions are met:

- 1. The lot split does not contain more than two (2) lots; and
- 2. The two lots created are not more than $\frac{1}{2}$ acre in size each for lots located within the City limits; and

3. There is no proposed or perceived need of public improvements as a result of the split. The lot split does not occur in general proximity to an area organized by metes and bounds description and/or where there is a perceived need to create an organized development pattern through platting; and
4. That any platted lot be split only once under the terms of this provision; and
5. That the lot split is not part of a continuing scheme of lot splitting for a particular area; and
6. That the lot split does not violate any provision of the Zoning Ordinance, Official City Plans, or any other state or local ordinance; and
7. That the lot split does not adversely affect public health, safety or welfare.

Source: Ord. 501, Sec. 2 (1996).

- C. PROCEDURE FOR SIMPLE LOT SPLIT. An application for a simple lot split shall be submitted to the City Planner on forms as provided. The City Planner and Auditor shall review such application and determine if all requirements to grant the lot split have been met. If concurred approval is given, the City Planner shall then schedule a review before the Planning Commission following written notice to property owners within one hundred fifty (150) feet, excluding streets, of the application. The Planning Commission may approve, conditionally approve, or deny said simple lot split. If approval is granted, the Planning Commission Chairperson, City Auditor, and City Planner shall authorize such approval by signing a certificate which shall subsequently be given to the applicant. There shall be a right to appeal to the Planning Commission if the City Planner and Auditor shall not give their approval.
- D. APPLICATION FEE. The application for a simple lot split shall be submitted to the City Planner along with the fee set by the City Commission. If the City Planner and Auditor do not approve the lot split so that the matter is not sent to the Planning Commission, the fee shall be refunded.
- E. TRANSFER OF LOTS. No owner, or agent of any owner, shall transfer, sell, or agree to sell any land, using the legal description in a proposed plat, before such plat has been approved by the Planning and Zoning Commission and City Commission and recorded with the Cass County Register of Deeds, or using the legal description of a

split lot before such lot split has been approved by the Planning and Zoning Commission.

4-0403.2. VARIANCES.

- A. GENERAL. Where the subdivider proves that extraordinary hardship would result from the strict interpretation of this ordinance, the Planning Commission may grant a variance from these regulations. The Planning Commission shall not approve variances unless it can be shown by the subdivider that the following conditions apply:
- (1) The conditions upon which the variance is based are unique to the property and are not applicable generally to other property in the same district.
 - (2) Because of the particular physical surrounding of the property, a particular hardship to the owner would result, as opposed to mere inconvenience, if the strict letter of these regulations were carried out.
 - (3) The granting of the variance would not harm the surrounding neighborhood in any way and would be beneficial to public health, safety, and welfare.
 - (4) The variance is consistent with the proper development of the area.
- B. CONDITIONS. In approving variances, the Planning Commission may add conditions to approval in order to secure the objectives of these regulations.
- C. PROCEDURE. An application for variance shall be submitted to the City Planner by the subdivider on forms as provided. Upon receipt of the completed application, and any other information as requested, the City Planner shall schedule review before the Planning Commission. The Planning Commission may approve, conditionally approve, or deny said variance.

4-0403.3. RESUBDIVISION OF LAND.

- A. PROCEDURE. For any change in a map of an approved or recorded subdivision plat, if such change affects any street layout shown on such map, or area reserved thereon for public use, or any lot line, or vacates any portion of said plat, such parcel shall follow the same procedures, rules, and regulations as an original subdivision plat.
- B. FUTURE RESUBDIVISION OF LAND. Where a resubdivision request has been made and the plat shows one or more lots

containing more than twice the minimum lot size required in the Zoning Ordinance, and there are indications that such lots will eventually be resubdivided into smaller building sites, the Planning Commission may require that:

- (1) The lots allow for a future opening of streets and the ultimate extension of adjacent streets.
- (2) Easements providing for the future opening and extension of the street be made a requirement of final replat approval.

- C. BUILDING PERMITS. Building permits in resubdivisions shall not be issued until the final plat has been approved by the City and recorded with the County Register of Deeds. However, if a person seeks a building permit for a parcel of land which could be properly granted under existing regulations and which could also be granted under the proposed replat, then a permit may be granted prior to Planning Commission approval of the replat. The building permit shall be issued under the existing lot description rather than the proposed lot description.

4-0403.4. Schedule of Fees, Charges and Expenses. The City Commission shall establish a schedule of fees, charges and expenses and a collection procedure for plats, replats and other matters pertaining to Chapter 4-04 of the Revised Ordinances of the City of West Fargo. A schedule of fees shall be on file in the office of the West Fargo City Auditor, and may be altered or amended by the City Commission by resolution. Until all applicable fees, charges and expenses have been paid in full, no final action shall be taken.

4-0403.5. Retracement Plats.

- A. RETRACEMENT PLATS REQUIRED FOR UNDEVELOPED PARCELS. Any undeveloped parcels which have not been previously platted and are located within the City limits of the City of West Fargo shall be required to file a Retracement Plat prior to receiving a building permit for development. Retracement Plats are defined as plats of existing metes and bounds parcels which have been of record with the Cass County Register of Deeds since before December 2, 1985, therefore are not considered subdivisions under the West Fargo Subdivision Ordinance and are not subject to all the Subdivision requirements.

The purpose of Retracement Plats is to provide clear legal descriptions with an associated subdivision plat title and accurate parcel size information.

- B. PROCEDURE. The procedure for review and approval of Retracement Plats is as follows:
1. Plats shall be prepared in accordance to N.D.C.C. platting requirements and Section 4-0405.4 of the Code of City Ordinances, Subdivision Regulations of the City of West Fargo, and shall denote any existing right-of-ways or easements.
 2. The City Planning Department shall review the plat and shall forward copies to appropriate departments for their review and comments.
 3. The City Planning and Zoning Commission shall review the plat and forward their recommendation to the City Commission. No public hearing shall be required.
 4. The City Commission shall give consideration to the plat at their next regular meeting.
 5. Upon City Commission approval the plat shall be signed and recorded with the Cass County Register of deeds.
- C. PARTIALLY OR FULLY DEVELOPED PARCELS. Property owners with partially or fully developed parcels are encouraged to file retracement plats with the City to provide clear legal descriptions with an associated subdivision plat title and accurate parcel size information. This will provide for a cleaner abstract and will allow the City to better manage property information. The same procedure for approval as in Section 4-0403.5B shall be followed.
- D. COMBINING OF PREVIOUSLY PLATTED LOTS. Property owners wishing to combine properties which have been previously platted for the purpose of building across lot lines and/or increasing lot area to address district requirements may submit a retracement plat following the above procedures; provide the following conditions are met:
1. No additional right-of-way is required or being established.
 2. There is no proposed or perceived need of public improvements as a result of the combining of platted lots
 3. Lots to be combined are contiguous and under common ownership.

4-0404. SUBDIVISION APPLICATION PROCEDURE AND APPROVAL PROCESS.

Subsections:

- 4-0404.1. General Classification and Procedure.
- 4-0404.2. Official Submission Date and Public Hearing Notification.
- 4-0404.3. Public Hearing Requirements.
- 4-0404.4. Preapplication Conference.
- 4-0404.5. Area Sketch Plan.
- 4-0404.6. Site Plan.
- 4-0404.7. Final Plat Review (Minor Subdivisions)
- 4-0404.8. Preliminary Plat Review (Major Subdivisions)
- 4-0404.9. Final Plat Review by City Commission.

4-0404.1. General Classification and Procedure. For every land subdivision request, the subdivider or his agent shall make application to the City planner and secure approval of such application by the Planning Commission and the City Commission prior to subdivision plat recording. In order to secure approval of a subdivision request, the request shall be classified by the City Planner and reviewed in its entirety according to the following procedures and classifications:

A. MINOR SUBDIVISIONS. Includes subdivisions containing five single-family residential lots or less. Three steps are required for approval:

- (1) Preapplication Conference
- (2) Site Plan
- (3) Final Plat

B. MAJOR SUBDIVISIONS. Includes all other subdivisions. Five steps are required for approval:

- (1) Preapplication Conference
- (2) Area Sketch Plan
- (3) Site Plan
- (4) Preliminary Plat
- (5) Final Plat

Where warranting circumstances exist, the City Planner may add or relieve the applicant of certain submission requirements.

4-0404.2. Official Submission Date and Public Hearing Notification. The subdividing owner, or his authorized agent, shall take application to subdivide and to pay the required fee to the City Planner at least three (3) weeks prior to any public hearing held before the Planning Commission. Failure to meet this timetable shall be grounds to withhold public hearing notification. At least five days before a public hearing, notice of the time and place of such hearing shall be sent by certified mail to the

person(s) whose name(s) will appear on the final plat application. A subdivision plat is considered to be officially submitted when first reviewed by the Planning Commission.

Source: Ord. 916, Sec. 1 (2012)

4-0404.3. Public Hearing Requirements. A public hearing shall be held before the Planning and Zoning Commission after notice of the time and place thereof has been published in the City's official newspaper for two (2) consecutive weeks prior to the date of the public hearing. Before a public hearing can be scheduled, the subdivider or his agent shall submit the following data to the City Planner:

- A. County Tax Statement for the parcel(s) being platted.
- B. Area sketch plan (two (2) paper copies and one (1) digital copy), when necessary.
- C. Site Plan (two (2) paper copies and one (1) digital copy).
- D. Three (3) paper copies of preliminary plat for major subdivisions and one (1) digital copy; three (3) paper copies of Final Plat for minor subdivisions and one digital copy.

Source: Ord. 916, Sec. 2 (2012)

4-0404.4. Preapplication Conference. Prior to the preparation of any plan or plat, the subdivider or his agent shall meet with the City Planner and discuss:

- A. General Plan of Development.
- B. Subdivision Approval Process.
- C. Timetable and Submission Requirements.
- D. Zoning Requirements.
- E. Subdivision Requirements.
- F. City Plans and Policies.

- G. Placement of Mail Box Plan. (Source: Ord. 712, Sec. 3 (2004))

At this time, a subdivision fee shall be filed and a subdivision application shall be recorded.

4-0404.5. Area Sketch Plan. For Major Subdivisions, an area sketch plan shall be prepared by the applicant and submitted to the City Planner prior to preliminary plat preparation. Two (2) paper copies and one (1) digital copy of this plan shall be submitted. The area sketch plan will be reviewed by City Staff and comments shall be forwarded to the Planning Commission. The

Planning Commission shall review this plan to determine the proposed subdivision's compatibility with adjacent land uses and with future development of the surrounding area (See Figure 5 in Section 4-0405).

Source: Ord. 916, Sec. 3 (2012)

4-0404.6. Site Plan. For all subdivisions, a site plan shall be prepared by the applicant and submitted to the City Planner prior to plat review by the Planning Commission. For major subdivision requests, this plan shall be submitted with the submission of the area sketch plan. Upon receipt of the site plan, the City Planner will receive comments on said plan from appropriate city departments. The City Planner will then forward these comments to the applicant in order to be incorporated onto the Preliminary or Final Plat. Two (2) paper copies and one (1) digital copy of the site plan shall be submitted to the City Planner for review (See Figure 6 in Section 4-0405).

Source: Ord. 916, Sec. 4 (2012).

4-0404.7. Final Plat Review (Minor Subdivisions). Final Plat review for minor subdivisions shall follow the same procedures and rules for approval as for Preliminary Plats for major subdivisions. Three (3) paper copies and one (1) digital copy of the Final Plat shall be submitted to the City Planner. The mylar print shall be submitted following Planning Commission and City Commission reviews of the Final Plat in order to include the conditions that may be attached to Planning Commission and City Commission approvals.

Source: Ord. 916, Sec. 5 (2012).

4-0404.8. Preliminary Plat Review (Major Subdivisions).

- A. GENERAL. Following the successful completion of all submission requirements, Three (3) paper copies and one (1) digital copy of the Preliminary Plat shall be submitted to the City Planner. The City Planner shall schedule a public hearing and distribute copies of the plat to appropriate agencies for comment. The Preliminary Plat must be submitted at least three (3) weeks prior to any public hearing on the plat.
- B. PLANNING COMMISSION REVIEW. After the public hearing, the Planning Commission shall have thirty (30) days to approve, conditionally approve, or deny the preliminary plat. The applicant may waive the requirement that the Commission act within thirty (30) days and may consent to an extension of such period. Following the Commission's decision, the subdivider will be notified of its action.
- C. APPROVAL OR CONDITIONAL APPROVAL. Conditional approval or unconditional approval of the Preliminary Plat shall not constitute approval of the Final Plat. Rather, it shall be deemed an expression of approval of the layout submitted on the Preliminary Plat and shall serve as a

guide to the preparation of the Final Plat. All conditions stated upon approval must be completed or included on the Final Plat prior to Final Plat review by either the Planning Commission or the City Commission.

- D. GRADING OF SITE PRIOR TO FINAL PLAT APPROVAL. Following major or minor plat approval by the Planning Commission, the developer may request approval from the Planning Commission to excavate and grade site. Upon consultation and approval from the City Engineer, the Planning Commission may grant the developer permission to commence site preparation to the grades and elevations as required and approved by the Engineer. However, under no circumstances shall this approval be grounds for the premature issuance of a building permit nor shall it constitute grounds for automatic approval of the Final Plat by the City Commission.

Source: Ord. 916, Sec. 6 (2012)

4-0404.9. Final Plat Review by City Commission.

- A. GENERAL. The subdivider or his agent shall submit three (3) paper copies, one (1) digital copy, and 1 mylar print of the Final Plat to the City Planner within one (1) Year of Preliminary Subdivision Plat approval by the Planning Commission. Should this time limit expire, Planning Commission approval will be considered void unless for good cause an extension is requested in writing by the subdivider and granted by the Planning Commission. Final Plats shall include all data as required by these regulations.
- B. CONDITIONS. All Final Plats shall comply in all respects with these regulations and the conditions given to said plat for approval by the Planning Commission. If the attached conditions are not met, a second review by the Planning Commission shall occur. If it can be determined that the preliminary approval is in conformance with the stipulated conditions and these regulations, secondary review by the Planning Commission shall be waived by the City Planner. Recommendation for approval shall then be sent to the City Commission for their consideration.
- C. CITY COMMISSION REVIEW. Prior to putting application on the City Commission Agenda, the following items shall be submitted to the City Planner at least one (1) week prior to the City Commission meeting:
 - (1) Certification that there are no delinquent special assessments and/or taxes on subject property.
 - (2) A current title opinion.
 - (3) A Vacation of Plat Certificate, if necessary.

- (4) Developer Subdivision Improvement Agreement.
- (5) Park Dedication Agreement.
- (6) Final Plat Document Signed by Developer.

Should Final Plat be approved, the City Auditor and Mayor shall execute the Plat. The subdivider or his agent shall provide the City with the necessary mylars and copies of the plat required for recording. The plat shall then be recorded with the Cass County Register of Deeds. Should recording not take place within six (6) months of City Commission approval, that approval will be considered null and void.

Source: Ord. 916, Sec. 7 (2012)

4-0405. DOCUMENT SPECIFICATION REQUIREMENTS.

(Source: Ord. 916, Sec. 8 (2012))

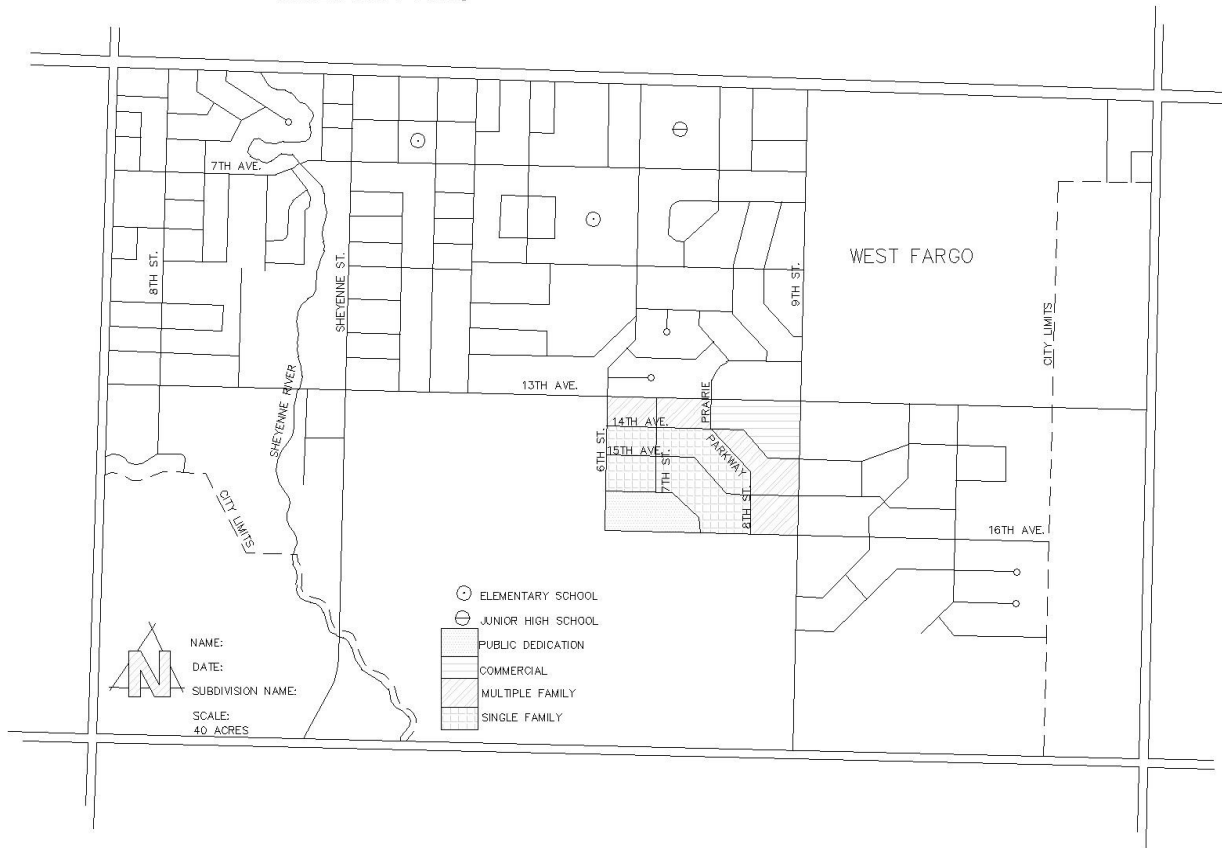
Subsections:

- 4-0405.1. Area Sketch Plan.
- 4-0405.2. Site Plan.
- 4-0405.3. Preliminary Plat.
- 4-0405.4. Final Plat Data Requirements.

4-0405.1. Area Sketch Plan. For all major subdivision requests, an area sketch plan shall be submitted by the applicant to the City Planner prior to Preliminary Plat preparation. The plan shall be of appropriate scale necessary to cover sufficient adjoining territory to indicate clearly significant features that will have a bearing upon the future development of the subdivision. The plan shall be an ink sketch, drawn to approximate scale, and shall include the following minimum specifications. (See Figure 5):

- A. Name of applicant; name of subdivision.
- B. North point, approximate scale and date.
- C. Name and patterns of proposed streets.
- D. Proposed boundary lines for subdivision.
- E. Written description of land uses within proposed subdivision.
- F. Approximate area of tract to be subdivided.
- G. Approximate location and size of public land dedication, if any.
- H. Surrounding land areas to include name and configurations of adjacent subdivisions, existing street names and patterns, and other significant land features such as highways, schools, parks, river or drains, and pedestrian/bikeways.
- I. Where the subdivider owns property or has option to buy property adjacent to that which is being proposed for subdivision, the general written planned land uses so as to show the possible relationship between the proposed subdivision and the future subdivision.
- J. Two (2) copies submitted to the City Planner on paper not less than 11" x 17" in size, as well as one (1) digital copy in a digital format specified by staff.

FIGURE 5. AREA SKETCH PLAN

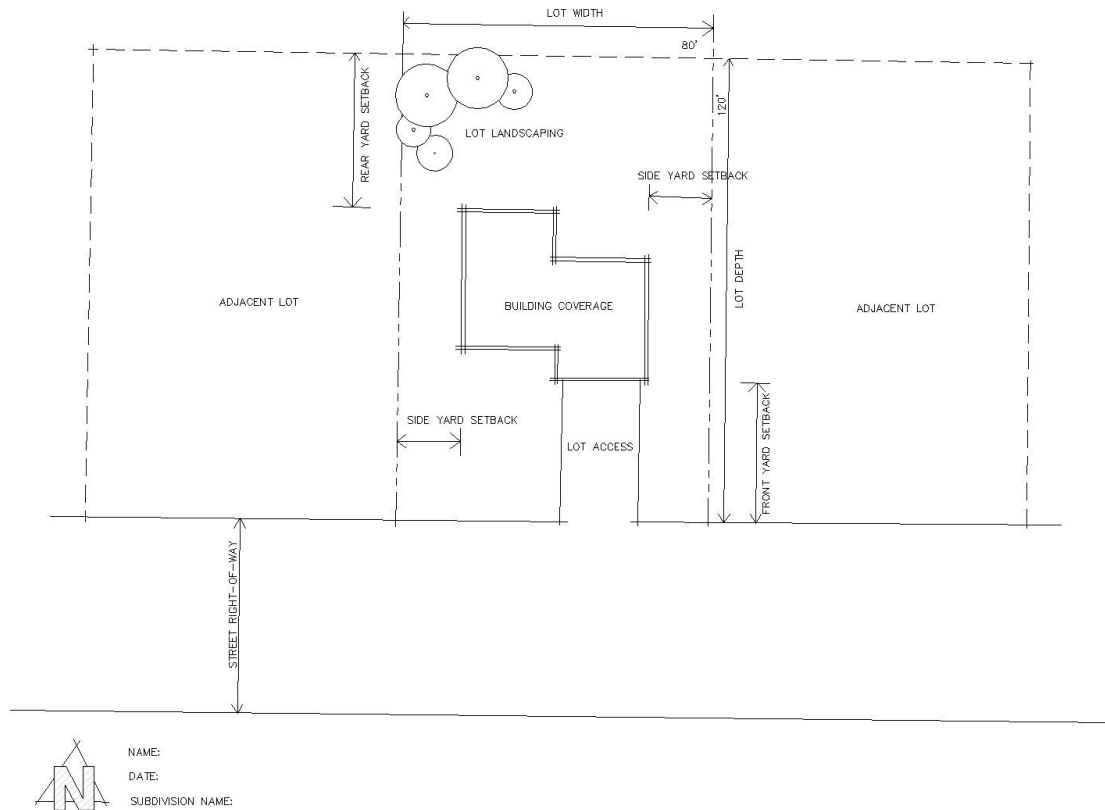


4-0405.2. Site Plan Requirements. (See Figure 6):

- A. Name of applicant; name of subdivision.
- B. Shall be drawn in ink at a scale of 1" = 100'.
- C. North point and date.
- D. Proposed boundary and lot lines within subdivision to include approximate dimensions of all proposed and existing lots.
- E. Existing and proposed street names to include street right-of-way widths.
- F. Means of ingress and egress to lots.
- G. Existing and proposed building on each lot to include all yard setback distances.

- H. Approximate square footage of each building.
- I. Existing and proposed landscaping/screening locations.
- J. Existing and proposed location of sidewalks and pedestrian/bikeways, if any.
- K. Provisions for off-street parking, snow storage, and garbage removal.
- L. Two (2) copies submitted to City Planner on paper not less than 11" x 17" in size, as well as one (1) digital copy in a digital format specified by staff.

FIGURE 6. SITE PLAN



4-0405.3. Preliminary Plat Requirements.

- A. Shall be drawn by a registered land surveyor at a minimum scale of 1" = 100 feet.
- B. Three (3) paper copies of preliminary plat submitted to City Planner, as well as one (1) digital copy in a digital format specified by staff.
- C. Proposed name of subdivision and legal description of the land covered by the plat.
- D. Date of preparation, scale, north point, name of subdivider, and name of preparer.
- E. Boundary lines of subdivision to include bearings and distances.
- F. The names and adjacent lines of any adjoining platted lands shall be dotted on the plat together with the names of adjoining streets.
- G. The location, width, and names of existing streets, alleys, or private roadways.
- H. The location, width, and names of proposed streets, or private roadways.
- I. Approximate radii of all curves and lengths of tangents.
- J. The purpose and width of any easement.
- K. The length and width of all lots and blocks together with the progressive numbering of said lots and blocks.
- L. The mean sea level elevation shall be shown as numerical figures should any portion of the plat lie within designated 100 year flood plain.
- M. The location, dimensions, and area of all property proposed to be set aside as a requirement of public land dedication.

The following information shall be submitted separately from the Preliminary Plat. The City Planner may waive any one of these requirements when applicable.

- N. The grading and drainage plan for all streets and lots. These plans shall be submitted to the City Engineer for approval prior to Preliminary Plat review.
- O. One copy of any existing or proposed restrictive covenants.

- P. The Placement of Mail Box Plan.
- Q. Landscape Plan for tree plantings for boulevard areas and buffer areas along major streets and/or streets within zoning corridor overlay districts.

NOTE: The lack of information under any item specified or erroneous information supplied by the applicant, shall be cause for disapproval of the Preliminary Plat.

4-0405.4. Final Plat Data Requirements. Source: Ord. 1045, Sec. 2 (2015)

- A. Shall be drawn by a registered land surveyor on a mylar print at a minimum scale of 1" = 100 feet.
- B. The original plat print and three (3) paper copies shall be submitted to the City Planner, as well as one (1) digital copy in a digital format specified by staff.
- C. The name and legal description of the land covered by the plat.
- D. Date of preparation, scale, and north point.
- E. Name and signature of all owners of the land covered by the plat.
- F. Name and signature of the registered land surveyor.
- G. Other endorsements shall include signature spaces for the City Engineer, Planning Commission Chairman, City Attorney, the Mayor and the City Auditor. All signatures shall be notarized.
- H. An accurate description of the property described in metes and bounds as shown on the preliminary plat.
- I. Notations for all monuments.
- J. 100 year flood elevation, when applicable.
- K. Exact boundary lines of subdivision to include bearings and distances.
- L. The names and adjacent lines of any adjoining platted lands shall be dotted on the plat together with the names of adjoining streets.
- M. Location, purpose, and exact width of all easements.
- N. The exact length of all lots and blocks together with the progressive numbering of said lots and blocks.
- O. The names and exact right-of-way widths of existing and proposed streets, alleys, or private roadways.

4-0406. SUBDIVISION DESIGN AND IMPROVEMENT STANDARDS.

Subsections:

- 4-0406.1. General Information.
- 4-0406.2. Blocks and Lots.
- 4-0406.3. Streets.
- 4-0406.4. Sidewalks.
- 4-0406.5. Utility and Street Improvements.

4-0406.1. General Information.

- A. CONFORMANCE TO APPLICABLE RULES AND REGULATIONS. In addition to the requirements stated herein, all subdivision plats shall comply with the following laws and regulations:
 - (1) All applicable provisions of the North Dakota Century Code.
 - (2) The City of West Fargo's Zoning Ordinance, official city plans and policies, building and housing codes, floodproofing code, and all other applicable laws of the appropriate jurisdiction.
 - (3) The applicable requirements of these regulations and any rules of the Health Department and/or appropriate state agencies.
 - (4) The rules of the State Highway Department if the subdivision or any lot abuts a State Highway or connecting street.
 - (5) The standards and regulations adopted by the City Engineer and all boards of the City of West Fargo.
 - (6) Plat approval may be withheld if a subdivision is not in accordance with the above rules and regulations and other requirements stated within these regulations.
- B. PLATS STRADDLING MUNICIPAL BOUNDARIES. Whenever a proposed subdivision requires access from outside the municipality, there shall be assurance from the developer that access is legally established and assurance from the City Engineer that the access road is adequately improved. Lot lines shall not straddle municipal boundaries.
- C. MONUMENTS. Permanent reference monuments shall be placed within each subdivision as approved by a registered land surveyor and shall:

- (1) Be placed at all block corners, lot corners, and control points.
 - (2) Block and control point monuments shall be iron pins set in concrete and each lot corner monument shall be iron pins set in the ground. The type and placement of each monument shall be consistent with City Engineering guidelines.
- D. SUBDIVISION NAMES. Subdivision names shall not duplicate or be likely confused with existing subdivision names. The Planning Commission shall have final authority to designate the name of the subdivision at the preliminary plat level.

4-0406.2. Blocks and Lots.

- A. BLOCKS. In general, the length, width, and shape of blocks shall be such as is appropriate for the locality, the development, or to meet existing street intersections.
- (1) Width. Blocks shall have sufficient width as to provide two tiers of lots of the depth required by the Zoning Ordinance. Exceptions to this requirement may be made for blocks abutting primary arterials, parks, railways, or other significant land features.
 - (2) Length and Shape. The length and shape of blocks shall be such as is appropriate for the locality and type of development contemplated, with emphasis on safe and convenient pedestrian and traffic circulation. Blocks shall generally not exceed 1,200 feet in length nor be shorter than 600 feet in length.
 - (3) Cross Easements. A ten (10) foot drainage easement shall be provided along the center of all blocks. When deemed necessary, a ten (10) foot pedestrian/bikeway easement may be required near the middle of the block by the Planning Commission in order to obtain convenient circulation to schools, parks, or other areas.
- B. LOTS.
- (1) General. Lots shall be arranged as such that there will be no foreseeable difficulties in securing a building permit due to topography, access, safety, or non-compliance with applicable regulations.

- (2) Access. All lots shall have access from an improved public or private street. All lots shall have paved driveway access to include provisions for emergency and service vehicle access as shown on the required site plan.
- (3) Double Frontage Lots. Double frontage lots shall be discouraged except as a measure to provide a buffer from arterial roadways or to overcome specific disadvantages of topography or land use.

Where lots abut a primary arterial street, the Planning Commission may require access to such lots from a service or local street necessitating the creation of double frontage lots (Figure 11). Where this provision is in effect, landscaping, as approved by the Planning Commission, shall be provided by a strip of land nearest the primary arterial.

- (4) Dimensions. Lot dimensions shall comply with the minimum requirements of the Zoning Ordinance.

- C. SIDE LOT LINES. In general, side lot lines shall be at right angles to street lines (or radial to curving street lines) unless a variation from this rule would allow greater solar access opportunities. In this case, side lot lines shall be encouraged to run due north and due south regardless of the resulting angle of incidence with the street lines (Figure 7). Within these lots, building orientation shall have the long axis east/west with a maximum 10° variation to the northwest or a 25° variation to the southwest (Figure 7).

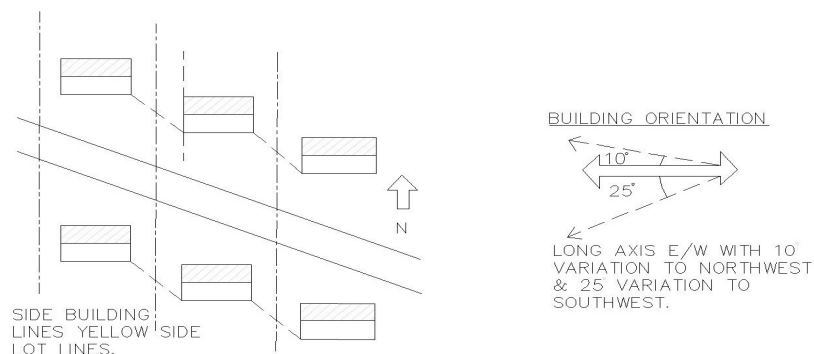


FIGURE 7. SIDE LOT LINES

- D. LOT DRAINAGE. Lots shall be graded so as to provide positive drainage away from all buildings and shall be coordinated with the general drainage pattern for the area. For all subdivision requests, a drainage plan shall be submitted to the City Engineer, by the subdivider, and subsequently approved by the engineer, prior to Planning Commission review of the Preliminary plat.

4-0406.3. Streets.

- A. FRONTAGE ON IMPROVED ROADS. all proposed subdivisions shall have frontage on and access from an existing improved street shown on the Official City Map. If no such street is shown on the map, access and frontage must be shown on an existing recorded plat and must be suitably improved in accordance with applicable city, township, county, or state specifications.
- B. GRADING PLAN. Streets shall be graded and improved to the specifications and approval of the City Engineer.
- C. STREET IMPROVEMENTS. Public street improvements shall conform to all construction standards and specifications as adopted by the City and the City Engineer and shall be incorporated into the construction plans submitted by the developer to the engineer. Subdivision landscape plans for major streets and/or streets identified within zoning corridor overlay districts shall be incorporated within the construction plans for plantings within the street right-of-way, unless otherwise provided for.

Source: Ord. 916, Sec. 9 (2012)

- D. STREET WIDTH. In order to provide streets of suitable width necessary to safely accommodate existing and proposed traffic and to avoid undue hardships to adjoining properties, the following street widths are hereby required (street classifications may be as indicated on City Plans or as determined by the Planning Commission):

(Chart on following page)

DEVELOPMENT DENSITY

<u>STREET CLASSIFICATION</u>	<u>RESIDENTIAL</u>		<u>NON-RESIDENTIAL</u>
	<u>Low to Medium</u>	<u>High</u>	<u>Commercial/Industrial</u>
<u>Minimum Right-of-way Width (in feet) ⁽¹⁾</u>			
Local Street	62	66	80
Collector Street	80	80	100
Minor Arterial and/or Mile-line Streets ⁽²⁾	120-150	120-150	120-150
Primary Arterial	As approved by City Commission.		

⁽¹⁾An additional ten (10) feet of right-of-way may be required to accommodate planned pedestrian/bikeway facilities.

⁽²⁾City Commission may consider adjustments pursuant to Comprehensive Plan and Planning and Zoning Commission Recommendations; In extraterritorial areas, consideration will be given to County right-of-way standards.

<u>STREET CLASSIFICATION</u>	<u>RESIDENTIAL</u>		<u>NON-RESIDENTIAL</u>
	<u>Low to Medium</u>	<u>High</u>	<u>Commercial/Industrial</u>
<u>Minimum Pavement Width (in feet) ¹</u>			
Local Street	28 ²	32 ²	40
Collector Street	36	40	48
Minor Arterial	40	48	52
Primary Arterial	As approved by City.		

¹Measured Curb to Curb. Curbs shall be concrete vertical unless otherwise approved by the City Engineer.

²Streets with no parking may have a pavement width of 22 feet. Streets with parking on one side shall maintain a pavement width of 28-32 feet.

Source: Ord. 748, Sec. 3 (2005); Ord. 809, Sec. 1 (2007); Ord. 1049, Sec. 3 (2015)

E. STREET LAYOUT.

- (1) General. All streets shall be generally aligned with the existing system of streets and with the proposed system of streets as detailed in City Plans. Where possible, streets shall be encouraged

to run generally in a east/west pattern in order to increase the potentials for energy conservation.

- (2) Local Streets. Local streets shall be designed to discourage through traffic and encourage neighborhood concepts and safety. Curvilinear, cul-de-sacs, looped shaped or other similar type streets shall be encouraged.

F. CUL-DE-SAC STREETS. The minimum street right-of-way for streets entering a cul-de-sac in a residential area is 62 feet with a minimum pavement width of 28 feet (see Figure 8). The cul-de-sac shall have a minimum right-of-way radius of 60 feet with a minimum pavement radius of 50 feet. Cul-de-sac streets are limited in length because of the City's emphasis on safe and convenient emergency vehicle access to abutting properties. For those cul-de-sacs measuring over 500 feet in length from the center of the adjoining road to the center of the cul-de-sac, comments shall be requested on such length from the Police, Fire and Ambulance Service Departments prior to Planning Commission approval of the Preliminary Plat.

Source: Ord 916, Sec. 10 (2012)

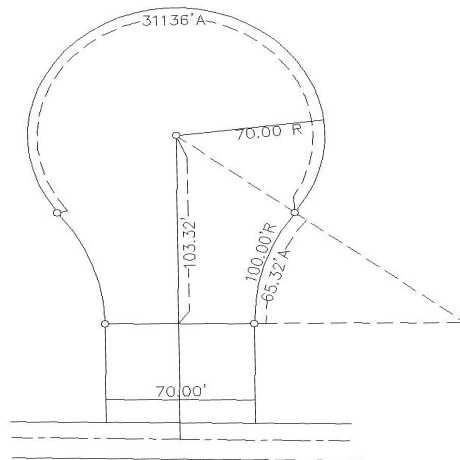


FIGURE 8. CUL-DE-SAC

G. DEAD-END STREETS.

- (1) If a street must dead-end temporarily, a street right-of-way line shall extend to the property line to allow future continuation of such street. A temporary turnaround shall be provided in accordance with the design standards of the City Engineer.
- (2) For a permanent dead-end street, its terminus shall not be closer than fifty (50) feet from the subdivision boundary line. Easements for utilities, pedestrians, drainage, or bicycles may be required by the Planning Commission past the terminus of such street. A cul-de-sac turnaround shall be provided in accordance with the standards of these regulations.

H. STREET GRADES.

<u>Maximum</u>	<u>Minimum</u>
5%	.4%

- I. HALF STREETS. Perimeter half streets shall be prohibited except where it is practical to require the dedication of the other half when the adjoining property is subdivided or rezoned, in which case half streets may be permitted. The probable length of time elapsing before dedication of the remainder shall be considered in this decision.

J. INTERSECTIONS.

- (1) Angle. Streets should normally intersect at 90 degrees. If deviation is unavoidable, the angle of the intersection should not be less than 75 degrees (Figure 9).

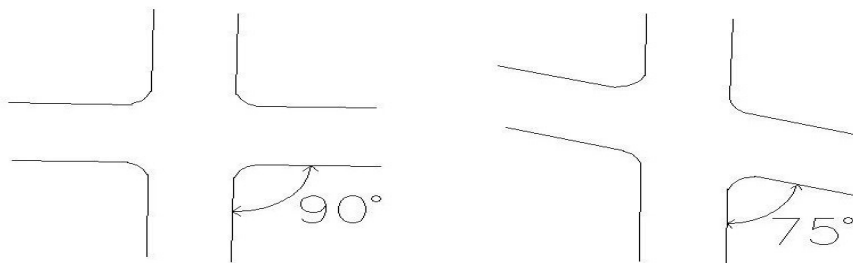


FIGURE 9. INTERSECTION ANGLES

- (2) Jogs. Proposed streets shall, where possible, be located opposite each other. When unavoidable, there shall not be less than 150 feet of center line offset between street jogs (Figure 10).

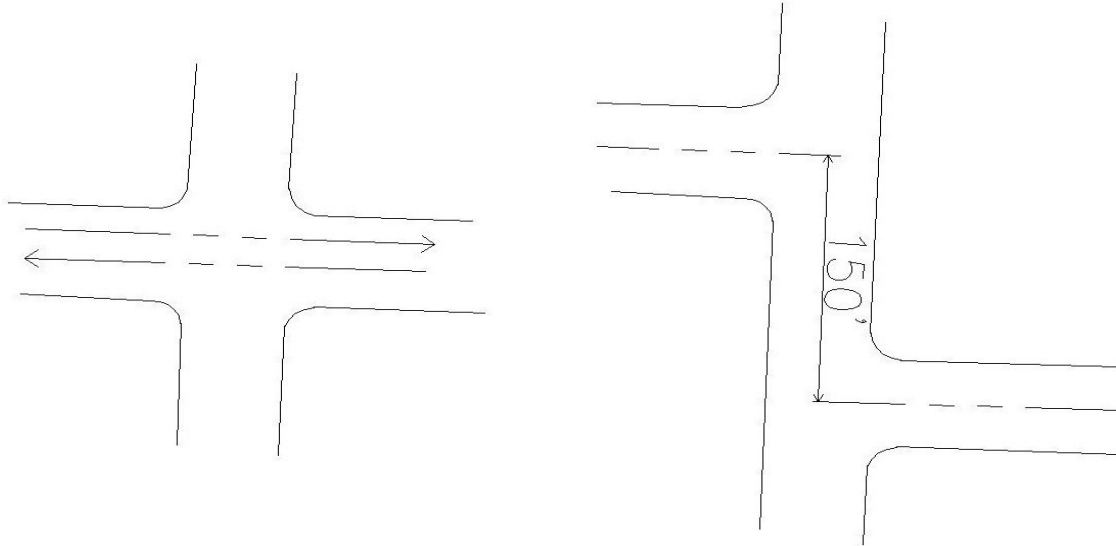


FIGURE 10. INTERSECTION JOGS

- (3) Curb Radius. Minimum curb radius at the intersection of two local streets shall be twenty (20) feet. Intersections involving collector or arterial streets shall have a minimum curb radius of thirty (30) feet. Curb radius shall be measured at the curb line.
- (4) Access Management Standards for Major Streets. A connection to an arterial or collector street or roadway is defined as either a driveway or intersection with any other street or roadway. Arterial and collector streets and roadways are identified in the City's Comprehensive Plan, are considered limited access facilities within the City limits and extraterritorial limits and shall be developed according to the following connection standards:
- Spacing of connections to designated arterial or collector streets and roadways in less developed areas is 1,320 feet with a minimum spacing of 660 feet.
 - Spacing of connections to designated arterial streets and roadways in developing areas is 660 feet with a minimum spacing of 330 feet.

- c. Spacing of connections to collector streets and roadways in developing areas is 300 feet with a minimum spacing of 150 feet.
- (5) Lot Corner Visibility. To provide adequate sight distance and to avoid traffic accidents, all visually impeding materials shall be removed or cut in accordance with Section 4-441 of the Zoning Ordinance or according to sight distance standards as provided in the Manual on Uniform Traffic Control Devices (MUTCD), whichever is greater.
- (6) Individual Lot Access. Direct lot access shall be a minimum distance from the intersecting curb line of any street. Distances, driveway widths, and construction standards shall be in accordance with Chapter Two of the Municipal Code and shall govern accesses within the City Limits and within the City's extraterritorial area.

Source: Ord. 748, Sec. 4 (2005)

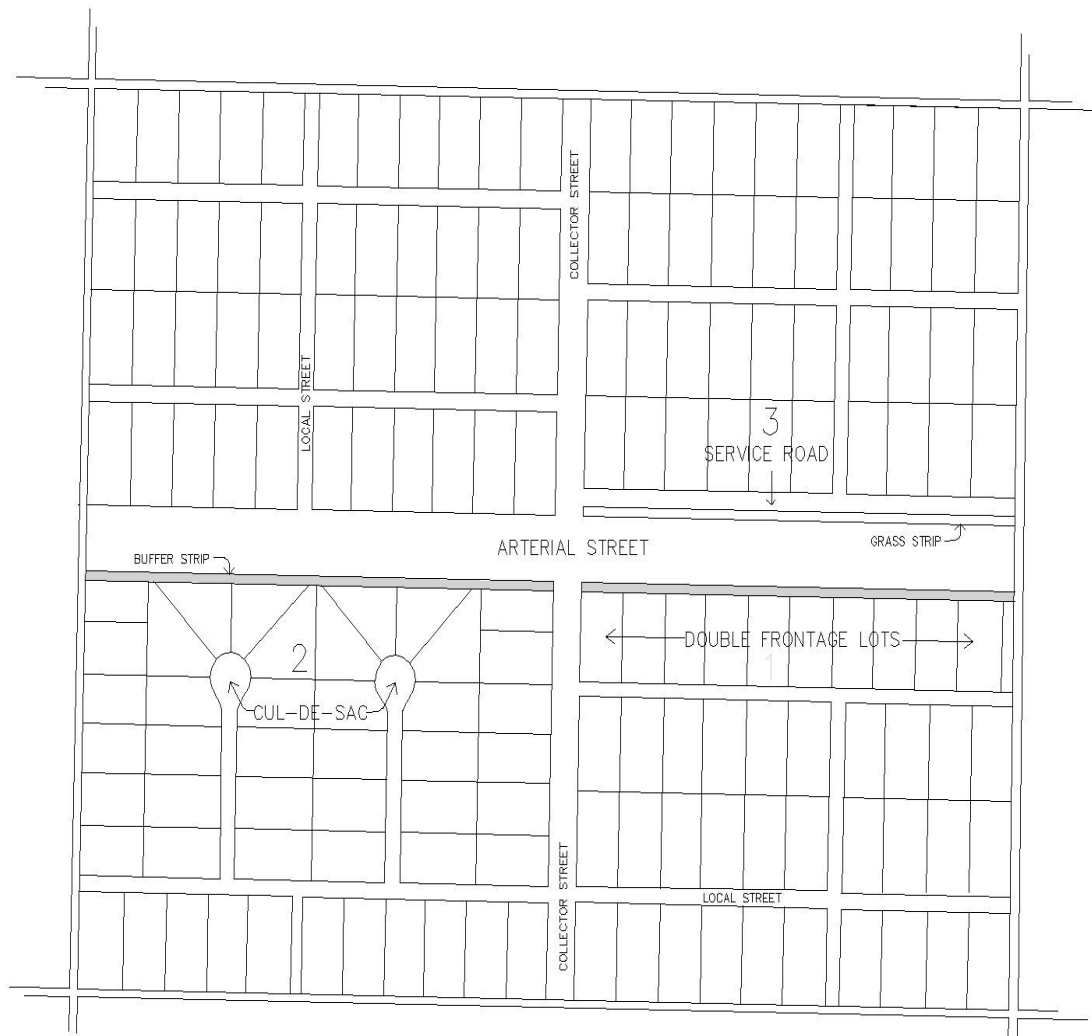
K. ARTERIAL STREET ACCESS CONTROLS. In order to prevent points of conflict and potential accident locations, the following access controls may be required by the Planning Commission whenever a proposed subdivision borders or contains an arterial roadway (Figure 11).

- (1) Double Frontage Lots. Lots designed so that the rear yard faces the arterial street and the front yard faces a parallel local street. Buffering and screening shall be provided by dedicating a buffer strip of land nearest the arterial street or establishing a buffer easement. The buffer strip or easement may be up to 30 feet in width, include possible berms of 4-6 feet in height, and screening with solid fencing, coniferous trees or both. Easements shall be in addition to the normal required lot depths and shall be included in the lot area owned and maintained by the lot owner or development association.

Source: Ord. 748, Sec. 5 (2005)

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FIGURE 11. ARTERIAL STREET ACCESS CONTROLS



- (2) Cul-de-Sac. Development of a series of cul-de-sacs or loop shaped streets entered from the parallel local street, with the rear yard of the terminal lots backing onto the arterial street. Buffering and screening shall be provided by dedicating a buffer strip of land nearest the arterial street or establishing a buffer easement, and providing berms and screening as defined under double frontage lots.
- (3) Service Road. A service road which is separated from the arterial street by a planting or grass

strip and having access to the arterial at suitable points as determined by the Planning Commission.

Source: Ord. 748, Sec. 5 (2005)

L. RAILROAD, HIGHWAY AND RIVER BANK CONTROLS. Whenever a subdivision borders or contains a railroad, or a highway, or a river the following controls shall be in effect:

- (1) Access points must be approved by the appropriate jurisdictional authority.
- (2) Residential development along arterial streets may be required to establish a buffer easement up to 30 feet in width, possible berms of 4-6 feet, and screening with solid fencing, coniferous trees or both. Residential development along I-94 shall be required to establish a buffer easement of 100 feet in width, berms elevated six feet above the elevation of the driving lanes on I-94 and screening with coniferous trees. Areas along on/off ramps shall have a buffer easement of 30 feet in width and more flexibility in berming and screening. Easements shall be in addition to the normal required lot depths and shall be included in the lot area owned and maintained by the lot owner or development association.
- (3) Developments adjacent to the Sheyenne River shall be required to establish a 100 foot building control line from the riverbank. The building control line shall be the minimum setback line for any primary and accessory structures requiring permits, parking lots, fill and other development activities which may cause increased riverbank destabilization.

Source: Ord. 748, Sec. 6 (2005)

M. STREET NAMES. Street names shall not duplicate or likely to be confused with existing street names. Whenever possible, streets shall be numbered in accordance with the progressive numbering system of the City. The Planning Commission shall have final authority to designate the street name, after consultations with the appropriate authorities, at the preliminary plat level.

N. STREET DEDICATION. All proposed streets shown on the plat shall be offered for dedication as a public street. The Planning Commission may require a subdivider to dedicate at his expense areas for widening or realigning existing narrow roads located within the subdivision. Land reserved in this manner does not satisfy or

substitute for any of the requirements stated in the Zoning Ordinance or these regulations.

- O. ALLEYS. In subdivisions where alleys are proposed to provide for vehicular service areas to back or side of properties to accommodate off-street loading, unloading, parking and residential garage access, alleys shall not be less than twenty (20) feet wide for residential alleys and not less than twenty-five (25) feet for commercial or industrial alleys. Dead-end alleys are prohibited, except that this requirement may be waived where an adequate turn-around for emergency and municipal service vehicles is provided. Alleys are not intended to take the place of streets, and parking on alleys is not allowed. The City Engineer and Public Works Director shall review proposed alleys for drainage, municipal services and design considerations. Where possible, utility services shall be provided in alleys and alleys shall be paved.

Source: Ord. 808, Sec. 2 (2007)

4-0406.4. Sidewalks.

- A. LOCATION AND DESIGN. Sidewalks shall be included in the non-pavement right-of-way of all roads as determined by the City Engineer and as approved by the City Commission. Sidewalks shall be constructed to City standards found in Chapter Two of the Municipal Code.
- B. PEDESTRIAN EASEMENT. When deemed necessary, a ten (10) foot pedestrian easement may be required near the middle of the block by the Planning Commission in order to obtain convenient circulation to schools, parks, and other areas.
- C. PEDESTRIAN, BIKEWAY, OR MULTI-USE FACILITIES. Pedestrian linkages between neighborhoods and along Collector/Arterial street corridors is promoted by the City to provide a more walkable community. When deemed necessary, additional rights-of-way shall be dedicated, or easements provided to accommodate pedestrian, bikeway, or multi-use facilities within or along the external boundaries of the proposed development. Plans for facilities along Collector/Arterial Corridors should be provided for within the City's Comprehensive Plan or Fargo Moorhead Metropolitan Council of Government's Bicycle and Pedestrian Plan.

Source: Ord. 353, Sec. 2 (1985); Ord. 458, Sec. 7 (2005); Ord. 916, Sec. 11 (2012);

4-0406.5. UTILITY, STREET AND OTHER IMPROVEMENTS.

- A. GENERAL. Utility, pedestrian/bikeways and street improvements shall be fully provided in each subdivision in accordance with these regulations, the City Engineer's utility and street improvement design standards, and applicable city ordinances.
- B. APPROVAL OF PLANS. In order to assure that adequate public improvements are available and will have sufficient capacity to serve the proposed subdivision, plans for streets, pedestrian/bikeways, drainage, sewerage, and water facilities will be submitted to the City Engineer, and subsequently approved by the Engineer, prior to Final Plat approval by the City Commission.
- C. PUBLIC SEWER CONNECTION. It shall be the policy of the City to discourage individual sewer systems within the corporate limits of the City where it would be practical to connect with the public sewer system.
- D. MANDATORY CONNECTION TO PUBLIC SEWER SYSTEM. If a public sanitary sewer is accessible and a sanitary sewer is placed in a street or other type roadway abutting upon property, the owner of that property shall be required to connect to said sewer for the purpose of disposing of waste. Mandatory connection shall also be in effect for those properties within 200 feet of the public sewer system in accordance with Section 9-0313 of the Revised Ordinance of 1978 of the City of West Fargo. No individual sewage disposal systems shall exist within these limits.
- E. INDIVIDUAL SEWAGE SYSTEMS. Where connection to public sewerage system is not required, individual sewage disposal systems may exist. Minimum lot area shall conform with the requirements of Section 4-0408 of this ordinance. All such systems shall have soil map data and seepage fields inspected and approved by the County Health Sanitarian and the City Engineer prior to Final Plat approval by the City Commission.
- F. DRAINAGE AND GRADING PLANS. A subdivision drainage plan shall be reviewed and approved for each subdivision which establishes the proposed finish grades for the development. When lots are developed, the finished grades should be according to the approved drainage plan. Developers, contractors and property owners are responsible for maintaining undeveloped lots according to City standards.

4-0407. PUBLIC SITES AND USES.

Source: Ord. 605, Sec. 1 (2000)

Subsections:

- 4-0407.1. Subdivision Exactions.
- 4-0407.2. Private Open Space/Parks.
- 4-0407.3. Plan to Provide for Public Use.
- 4-0407.4. Preservation of Natural Features and Amenities.

4-0407.1 Subdivision Exactions. Because new development within the City and its extraterritorial area increases population and/or demand upon public services, it shall be required that the owner or developer (subdivider) of every subdivision or resubdivision of property dedicate land for parks, playgrounds, public open space, public trails, municipal facilities, park facilities and/or pay a fee in accordance with those regulations for the purpose of providing the above-mentioned public uses and facilities for existing and future residents of the community. Subdivisions or resubdivisions of properties which are partially or fully developed will only be required to provide for dedication on the undeveloped portion of the property being platted into lot(s).

Source: Ord. 748, Sec. 8 (2005)

- A. APPLICATION. The provisions of this requirement shall apply to all of residential, commercial, industrial and other subdivisions and shall include replats where land dedication and/or cash-in lieu of dedication fees have not been previously provided. Where landowners previously have dedicated land in advance of development, the City Commission will determine if a dedication will be required and what an equitable amount would be.
- B. PROCEDURE. The subdivider of property shall submit with the application for subdivision or resubdivision a letter from the Park District indicating their recommendation for land dedication or cash-in-lieu of land dedication. When the subdivider has not provided a letter of recommendation from the Park District, the application will be considered incomplete. The City will then notify the Park District and provide information on the proposed subdivision. The Park District will be given thirty (30) days to review the subdivision information and provide recommendations, whereupon the application will be considered complete and the City will proceed with platting procedures.

The Planning and Zoning Commission will consider the Park District recommendations in addition to public uses and facilities identified within the Comprehensive Plan and other City plans when formulating their recommendation to the City Commission. The City Commission will have final authority to determine whether land dedication or cash-in-lieu of land dedication will be accepted.

- C. LAND DEDICATION. The amount of land required to be dedicated by the subdivider pursuant to this ordinance, shall be based upon the type of development and shall be a percentage of the gross area of all property to be subdivided as follows:

Residential Subdivision - 10%
Commercial Subdivision - 5%
Industrial Subdivision - 5%
Other Subdivision - 10%

Where no proposed use is given for lots within the proposed subdivision, the City will base the required dedication on the future land use as shown in the Comprehensive Plan. The land area conveyed or dedicated to the City will not be used in calculating density requirements of the Comprehensive Plan and Zoning Ordinance.

- D. LAND SUITABILITY. Land to be dedicated shall be reasonably suitable for its intended use and shall be at a location convenient to the people to be served. In evaluating the adequacy of proposed land dedications, the City shall consider factors including size, shape, topography, geology, hydrology, tree cover, access and location. Land will not be accepted as meeting the required dedication if it is encumbered with major utility easements, storm drains or retention areas, wetlands or other features which make the property difficult to utilize for parks or other desired municipal or park facilities. The City may consider land for parks or open space that is located in the vicinity of areas for storm water retention, major drains, or wetlands or other natural features provided the dedication will further the interests of the City or Park District, as well as the City's Comprehensive Plan. The City Commission will make the final decision whether land will be accepted for dedication.
- E. TIMING AND MAINTENANCE. Prior to final plat approval by the City Commission, the subdivider shall denote on the plat the designated park or open space land, or shall tender a deed of the dedicated land to the public entity that is to receive the land. If the plat is not approved, the deed shall be returned to the subdivider. The transfer of the deed is only final upon final approval of plat. The public entity that receives the dedicated land shall be required to maintain such land.
- F. FEE IN LIEU OF LAND DEDICATION. When it is determined that park dedication is not desirable due to location, size or other suitability factors, the City shall require, in lieu of land dedication, a cash dedication equal to a percentage of the fair market value of the property. Such percentage is based on the requirements identified above. For the purposes of this section, fair

market value shall be determined at the time of final plat approval in accordance with the following:

1. The City may establish by resolution of the City Commission annually the acceptable value for residential, commercial and industrial designated land for consideration as the fair market value; or
2. The developer may submit a copy of the purchase agreement and/or other pertinent information for which the City will take into account any and all concessions made and any improvements to said property to arrive upon an agreed upon fair market value at the time of approval of plat; or
3. The fair market value may be based upon a current appraisal submitted to the City by the subdivider at the subdivider's expense. The appraisal shall be made by appraisers who are certified or licensed through the State of North Dakota.
4. If the City disputes such appraisal, the City may, at the subdivider's expense, obtain an appraisal of the property by a qualified real estate appraiser, which appraisal shall be conclusive evidence of the fair market value of the land.

Source: Ord. 1049, Sec. 4 (2015)

- G. COMBINED LAND AND CASH DEDICATIONS. The City may elect to receive a combination of cash and land as part of parkland dedication requirements. In such cases, the percentage of land dedicated shall reduce the required fee percentage by an equal amount.
- H. PAYMENT TIMING AND PROCEDURES. The subdivider shall make payment to the City upon approval of the final plat. Funds received by the City shall be placed in a public improvement fund and in the discretion of the City Commission be used to benefit the residents of the community. Any public facilities constructed or improved with these funds shall be located in the general neighborhood if benefitting that subdivision, or elsewhere in the community if benefitting the community as a whole.

4-0407.2. Private Open Space/Parks. Where private open space for park and recreation purposes is provided in a proposed subdivision, such areas may be used for credit, at the discretion of the City Commission, against the requirement of dedication for park and recreation purposes, provided the City Commission finds it in the public interest to do so. Generally, however, land dedications for private parks will be discouraged.

4-0407.3. Plan to Provide for Public Use. Wherever a tract to be subdivided includes area for school, or other public use,

such as streets, which are indicated on official City plans or any portion thereof, such space may be required for reservation by the Planning Commission. If so required, the Planning Commission shall give the public agency involved sixty (60) days to express its interest in the proposed subdivision in connection with the use of the public site. Should interest be expressed by the public agency involved, that agency shall have an additional sixty (60) days within which to arrange for the acquisition of the public site under consideration. If no interest is shown within the first sixty (60) days, the developer may proceed with development of the parcel in question.

4-0407.4. Preservation of Natural Features and Amenities.

- A. General. Existing and proposed features which would add value to land, enhance traffic corridors, or benefit the City as a whole, shall be preserved and/or included in the design of subdivisions.
- B. Boulevard Trees. Boulevard trees shall be planted in accordance with Section 4-532 of the Revised Ordinance of 1990 of the City of West Fargo as amended. No building permits for residential property or property abutting 13th Avenue East may be issued unless in accordance with that ordinance. Boulevard areas not included within the above-mentioned ordinance shall have a landscaping plan approved as part of the subdivision process and have provisions made for payment. The installation of the trees provided for within the landscaping plan shall then be installed when the abutting property is developed.
- C. 13th Avenue Corridor. All trees to be planted on the 13th Avenue traffic corridor shall be in accordance with applicable City plans and ordinances and receive approval from the Planning Commission. Tree and landscape plans between building line and street curb line shall be included on the required site plan with written data as to the species of the trees to be planted. These trees shall be in general conformance to official tree planting plans for the corridor. Trees on private property and within the boulevard must be maintained and replaced when necessary by the responsible property owner.

4-0408. EXTRATERRITORIAL PROVISIONS.

Subsections:

- 4-0408.1. General Purpose.
- 4-0408.2. Subdivision Review.
- 4-0408.3. Building Permits.
- 4-0408.4. Residential Development.
- 4-0408.5. Commercial/Industrial Development.
- 4-0408.6. Individual and Private Group Sewer and Water Facility Design.
- 4-0408.7. Street Design and Access.
- 4-0408.8. Street Maintenance.

4-0408.1. General Purpose. The City of West Fargo shall exercise its authority over extraterritorial subdivisions for the purposes of:

- A. Promoting compact urban development.
- B. Preventing urban sprawl.
- C. Preserving prime agricultural farmland.
- D. Controlling public service costs.
- E. Maintaining open space.
- F. Promoting harmonious development.

4-0408.2. Subdivision Review. In addition to the requirements stated herein, comments shall be gained from the Cass County Planning Commission and the applicable township board prior to preliminary review before the Planning Commission.

4-0408.3. Building Permits. No building or other structure shall be erected, moved, added to, or structurally altered without a permit therefore, issued by the administrative official pursuant to Chapter 7 of the ordinances of the City of West Fargo.

4-0408.4. Residential Development. Where connection to the municipal or a rural central water and sewer system would be anticipated within a ten (10) year period, residential subdivisions shall be encouraged to connect to such system. For those developments connecting to such system, lot and yard requirements shall be as required for the particular use within the Zoning Ordinance.

Where no municipal and rural central water and sewer system can feasibly exist, the following minimum standards shall apply:

- A. One acre for non-farm single family lots.
- B. 100 foot lot width at building setback line.

- C. Setbacks consistent with pertinent provisions of the Zoning Ordinance.
- D. For every dwelling unit over one per lot, an additional 10,000 square feet of lot area shall be required in addition to the initial one acre lot size.

4-0408.5. Commercial/Industrial Development. Where connection to the municipal or a rural central water and sewer system is not feasible, as described in Section 4-0406.5 and 4-0408.4 hereof, the following standards shall apply:

- A. Minimum lot sizes shall be five (5) acres for industrial and three (3) acres for commercial development.
- B. Off-street parking as required by the Zoning Ordinance.
- C. Yard and landscape requirements shall be as required in the Corridor Overlay (C.O.) District within the Zoning Ordinance.

Should municipal or rural central water and sewer connection be available, yard, lot, and design standards shall be as required for the particular use in the Zoning Ordinance.

4-0408.6. Individual and Private Group Sewer and Water Facility Design.

- A. GENERAL. Where connection to the municipal or a rural central water and sewer system is not feasible, as determined by the City Engineer and Planning Commission, individual or private group sewer and water facilities may be permitted. Such facilities shall conform with all applicable state codes and provisions and shall be approved by the Cass County Engineer and City Engineer prior to Final Plat approval by the City Commission.
- B. LOT REQUIREMENTS. Lot requirements shall be as stated within these extraterritorial provisions.
- C. SYSTEM DESIGN. Each facility shall be designed and constructed to City Engineering standards and in accordance with these regulations.
- D. SOIL MAP DATA. For all sewerage systems, soil map data shall be presented and approved by the Cass County Sanitarian and thereupon presented to the Planning Commission indicating that all proposed lots are adequate for individual or private group disposal systems.

4-0408.7. Street Design and Access. Streets shall normally be designed and constructed in accordance with these regulations and City Engineer standards. For all section line roads, minimum dedicated right-of-way shall be 100 feet. Access upon federal, state, county, and township roads shall be subject to the approval

of the State Highway Department, appropriate township board, County Engineer, City Engineer, and Planning Commission.

4-0408.8. Street Maintenance. The applicant shall submit to the Planning Commission a statement indicating who will be responsible for street maintenance and snow removal.

4-0409. SUBDIVISION IMPROVEMENT AGREEMENTS.

Source: Ord. 860, Sec. 1 (2010)

Subsections:

- 4-0409.1. Completion of Improvements.
- 4-0409.2. Improvements Installed by Developer.
- 4-0409.3. Creation of Improvement District by City.
- 4-0409.4. Combination of Improvement District and Improvements Installed by Developer.

4-0409.1. Completion of Improvements. Upon final approval of any subdivision plat, the subdivider or developer may petition the City Commission for the purpose of installing the required public improvements. The subdivider or developer may petition the City Commission to install public improvements in one of the following three ways:

- A. The subdivider or developer installs all the required public improvements at their own cost.
- B. The City creates an improvement district in order to assess the improvement costs against benefitted properties.
- C. Part of the improvement costs are borne by the subdivider or developer and the City creates an improvement district in order to assess the remaining improvement costs against benefitting properties.

In any event, all improvements shall be installed in accordance with these regulations and the City Engineer's guidelines.

4-0409.2. Improvements to be Installed by Developer. Should the developer or subdivider request to install all required public improvements at their own cost, and the City Commission provides approval to this request, the developer shall be required to sign an Agreement Authorizing Improvements by Developer, as provided by the City's Attorney and approved by the City Commission which sets out the required security to be furnished by the developer.

4-0409.3. Creation of Improvement District by City. Should the developer or subdivider request to have the City create an improvement district in order for the public utilities to be installed, and the City Commission approves this request, the following procedure shall be followed:

- A. Subdivider or developer shall sign an Improvement District Agreement as furnished by the City Attorney and approved by the City Commission, which sets out the required security to be furnished by the developer.

4-0409.4. Combination of Improvement District and Improvements to be Installed by Developer. Should the developer or

subdivider request to have the City create an improvement district for the installation of part of the improvements and also request to install the remaining improvements, and the City Commission approves these requests, the following procedure shall be followed:

- A. Subdivider or developer shall sign an Agreement Authorizing Improvement by Developer, as provided by the City Attorney and approved by the City Commission.
- B. Subdivider or developer shall sign an Improvement District Agreement as furnished by the City Attorney and approved by the City Commission.

CHAPTER 4-100.

GENERAL PROVISIONS

SECTIONS:

- 4-110. Purpose.
- 4-120. Short Title.
- 4-130. Jurisdiction.
- 4-140. Severability.
- 4-150. Provisions of Ordinance Declared to be Minimum Requirements.
- 4-160. Repeal of Conflicting Ordinances.
- 4-170. Effective Date.

4-110. PURPOSE. The purpose of this Ordinance is to conserve and stabilize the value of property; to provide adequate open space for light and air; to secure safety from fire, panic and other dangers; to prevent undue concentration of population; to lessen congestion on streets, roads and highways; to facilitate adequate provisions for utilities and facilities such as transportation, water, sewerage, schools, parks and other public requirements; and to promote health, safety, morals, and general welfare.

4-120. SHORT TITLE. This Ordinance shall be known and may be cited and referred to as "The Zoning Ordinance of the City of West Fargo, North Dakota," to the same effect as if the full title were stated.

4-130. JURISDICTION. The provisions of this Ordinance shall apply within the corporate limits and the extraterritorial zoning jurisdiction of the City of West Fargo, North Dakota, as now and hereafter fixed and as established on the map entitled, "The Official Zoning Map of the City of West Fargo, North Dakota," as the same may be amended pursuant to Section 4-0107.

Source: Ord. 414, Sec. 4 (1991).

4-140. SEVERABILITY. If any section, provision or portion of this Ordinance is adjudged invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

4-150. PROVISIONS OF ORDINANCE DECLARED TO BE MINIMUM REQUIREMENTS. In this interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements adopted for the promotion of the public health, safety and welfare. Wherever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants, the most restrictive or that imposing the higher standards, shall govern.

4-160. REPEAL OF CONFLICTING ORDINANCES. All ordinances or parts of ordinances in conflict with this Ordinance, or inconsistent with the provisions of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect.

4-170. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after the date of its final passage and publication.

CHAPTER 4-200.

DEFINITIONS

For the purpose of this ordinance, certain terms or words used herein shall be interpreted as follows:

The word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word "shall" is mandatory, the word "may" is permissive.

The words "used" or "occupied" include the words "intended," "designed," or "arranged to be used or occupied."

The word "lot" includes the words "plot" or "parcel."

ACCESSORY USE OR STRUCTURE: A use structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure, to include privately-owned, fenced swimming pools, and satellite dishes.

AUTO BODY WORK: Major automotive repair including, but not limited to, the straightening of frame, sanding, puttying and painting activities, and other activities which involve changes to the frame or exterior of a vehicle, except for automobile (van) conversion.

AUTOMOBILE (VAN) CONVERSION: Where changes are made to the exterior or interior of an automobile or van for the purpose of sale. Such changes may include cutting holes for windows or redoing the interior; however, such changes would not include activities as defined in "Auto Body Work."

BEHAVIORAL HEALTH CARE FACILITY: A building or portion of a building, whether private profit or non-profit, or institutional, principally engaged in providing services for inpatient and outpatient services for treatment of victims of drug addition, psychiatric, psychological, or other behavioral health condition where care may be provided on a short-term or long-term basis whose operators are licensed by the State of North Dakota or by Chapter 10-13 of the Revised Ordinances of 1990 of the City of West Fargo, but not to include hospitals.

Source: Ord. 1049, Sec. 5 (2015)

BUILDABLE AREA: The portion of a lot remaining after required yards have been provided.

CHILD CARE CENTER: Any facility which is licensed as a child care center by the Department of Human Services to provide early childhood services to 13 or more children.

Source: Ord. 571, Sec. 1 (1999); Ord. 1049, Sec. 5 (2015).

CHILD CARE HOME: Any provider occupied single family dwelling (home) which is licensed as a "group child care home" or "group child care facility" by the Department of Human Services to provide early childhood services on a regular basis, and which facility has between eight (8) and twelve (12) children present, excluding the children of the childcare provider, as determined by the Department of Human Services.

Source: Ord. 1049, Sec. 5 (2015)

COMMERCIAL AGRICULTURE: The use of land for the growing and/or production of field crops, livestock, and livestock products for the production of income including but not limited to the following:

- a. field crops, including: barley, soy beans, corn, hay, oats, potatoes, rye, wheat, sunflowers, and sugar beets.
- b. livestock, including: dairy and beef cattle, goats, horses, sheep, hogs, poultry, game birds, and other animals including dogs, ponies, and rabbits.
- c. livestock products, including: milk, butter, cheese, eggs, meat, fur, and honey.

CONDITIONAL USE: A use which is not appropriate generally or without restriction throughout a zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses are allowed in a zoning district as a conditional use if specific provision for such uses is made in the zoning district regulations.

CONDOMINIUM: Individual ownership of a unit in a multiple dwelling structure.

CONVENIENCE ESTABLISHMENTS: Small establishments designed and intended to serve the daily or frequent trade or service needs of immediately surrounding medium to high density population. Such establishments include groceries, coin-operated laundry and dry-cleaning agencies, tailoring and dressmaking shops, beauty shops, barber shops, and the like. Specifically excluded are filling stations and repair garages, drive-in eating and drinking establishments, and liquor establishments.

DWELLING, MANUFACTURED HOME: A factory built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with the Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280) which became effective June 15,

1976, promulgated by the United States Department of Housing and Urban Development.

Source: Ord. 527, Sec. 1 (1997)

DWELLING, MOBILE HOME: A factory built structure, transportable in one or more sections, which in the traveling mode is eight body feet (8') or more in width or forty body feet (40') or more in length, or when placed on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a year-round dwelling with or without permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein and which bears a label certifying that it was built in compliance with the Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280), which became effective June 15, 1976, promulgated by the United States Department of Housing and Urban Development.

Source: Ord. 527, Sec. 1 (1997)

DWELLING, MULTIPLE: A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided. Condominiums and three or more unit townhouses are considered Multiple Dwellings for the purposes of this ordinance.

Source: Ord. 1049, Sec. 5 (2015)

DWELLING, SINGLE FAMILY (ONE-FAMILY): A structure containing only one dwelling unit designed to be located on a permanent foundation as required by state and/or local requirements and, if site built, constructed in accordance with the provisions of the applicable State and City Codes governing construction or, if manufactured off site, constructed in accordance with either the City code governing construction or the HUD Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280) which became effective June 15, 1976. All single-family dwellings shall be considered and taxed as real property, as provided by law. Each single-family dwelling shall have a minimum overall front width of twenty-two feet (22'), except in the Manufactured Housing District, minimum overall depth of twenty-two feet (22'), except in the Manufactured Housing District, and a minimum main floor living space square footage of 900 square feet for a one-story structure for all districts in which a single-family structure is allowed. The design, location and appearance of the single-family structure must be compatible with existing dwellings in the area. The roof on all single-family dwellings shall be pitched with a minimum vertical rise of four inches (4") for each twelve inches (12") of horizontal run except in the Manufactured Housing District and shall consist of shingles or other nonreflective roof material customarily used for conventional dwellings and be approved by the Building Administrator. The exterior material on all single-family dwellings shall be of a color, material and scale customarily used on existing dwellings within the general area and shall extend to the ground, except that when a solid concrete or masonry perimeter

foundation is used, the exterior covering material need not extend below the top of the foundation. The exterior material of the dwelling shall be approved by the Building Administrator.

Source: Ord. 527, Sec. 1 (1997)

DWELLING, TWIN HOME: A single-family dwelling attached to one other single-family dwelling by a common vertical wall, and each dwelling located on a separate lot.

Source: Ord. 1049, Sec. 5 (2015)

DWELLING, TWO-FAMILY: A detached residential building containing two dwelling units, designed for occupancy by not more than two families.

DWELLING UNIT: One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

ESSENTIAL SERVICES: The erection, construction, alteration, or maintenance by public utilities or municipal departments or commissions of underground or overhead telephone, gas, electrical, steam, communication, or water transmission, distribution, collection, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith for the furnishing of adequate service by such public utilities or municipal departments or commissions to the residents of West Fargo.

EXTRATERRITORIAL ZONING JURISDICTION: Unincorporated lands outside the city limits of West Fargo over which the City has the zoning authority.

FAMILY: One or more persons related by blood or marriage or a group of not more than 5 persons who need not be related by blood or marriage living together in a dwelling units.

FAMILY CHILD CARE HOME: An occupied private residence in which early childhood services are provided for no more than seven children at any one time, excluding the children of the childcare provider, as determined by the Department of Human Services.

Source: Ord. 571, Sec. 1 (1999); Ord. 1049, Sec. 5 (2015).

FARM ANIMALS: Animals generally raised on a farm which are either pastured or kept in pens, including but not limited to beef or dairy animals, horses, mules, sheep, goats, swine, llamas, ostrich and poultry. All animals except poultry are counted individually, whereas poultry are counted in groups of five as one animal unit.

Source: Ord. 748, Sec. 9 (2005)

FEEDLOT: A confined area or structure used for feeding, breeding, or holding livestock for eventual sale in which animal waste may accumulate but not including barns, pens, or other structures used in a dairy farm operation.

FLOOR AREA, GROSS: The total area of all floors of a building as measured to the outside surfaces of exterior walls and including halls, stairways, elevator shafts, attached garages, porches, and balconies.

GRADE: The average elevation of the finished ground at the exterior walls of the main building.

GROUP HOME: Any community residential facility, foster home, family care facility, or other similar home for developmentally disabled persons.

HEIGHT, BUILDING. The vertical distance from the grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to a point midway between elevation of the eaves and elevation of the ridge, for gable, hip and gambrel roof.

Source: Ord. 1049, Sec. 5 (2015)

HOME OCCUPATION: An accessory use of a dwelling unit for gainful employment involving the manufacture, provision, or sale of goods and/or services, excluding child care home as provided for in this ordinance.

Source: Ord. 1049, Sec. 5 (2015)

JUNK YARD: Any area used for the storage, keeping or abandonment of junk, including scrap metals, or other scrap materials or goods, or used for the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.

KENNEL: Any place in or at which any number of dogs are kept for the purpose of sale or in connection with boarding, care, or breeding, for which any fee is charged.

LANDFILL: A site where garbage, junk, building materials, demolition materials, trash, rubbish, or hazardous waste is placed in the ground for disposal or for fill purposes. A landfill shall not include dumping of materials covered by a permit under Chapter 15-0311 of the Revised Ordinances of 1990 of the City of West Fargo.

Source: Ord. 455, Sec. 1 (1993)

LOADING SPACE: A space or berth on the sale lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials and which abuts upon a street, alley or other appropriate means of access.

LOT: A parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of:

- a. A single lot of record.
- b. A portion of a lot of record.
- c. A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record.
- d. A parcel described by metes and bounds, provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this Ordinance.

LOT CORNER: A lot abutting upon two or more intercepting or intersecting streets, where the interior angle of the intersection or interception does not exceed one hundred thirty-five (135) degrees.

LOT COVERAGE: The amount of land covered or permitted to be covered by principal buildings, accessory buildings, and required parking spaces. When including other impervious surface areas such as driveways, parking areas which are not required or other areas, the total lot coverage may not exceed seventy (70) percent for single family and two-family lots, or seventy-five (75) percent for townhomes and multiple dwelling lots. Lot coverage percentages shall apply to front yards independently and to the entire lot in aggregate.

Source: Ord. 748, Sec. 9 (2005)

LOT DEPTH: The mean horizontal distance between the front lot line and the rear lot line, or the distance between the midpoint of the front lot line and the midpoint of the rear lot line.

LOT FRONTAGE: The front of a lot shall be construed to be the portion nearest the street. For the purposes of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage and shall be provided as indicated under YARDS in this section.

LOT, DOUBLE FRONTAGE: A lot having a frontage of two nonintersecting streets, as distinguished from a corner lot.

LOT, INTERIOR: A lot other than a corner lot.

LOT OF RECORD: A lot which is part of a subdivision recorded in the Office of the Cass County Register of Deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded, prior to the effective date of this Ordinance.

LOT WIDTH: The distance as measured by a straight line, between side lot lines at the points of intersection with the building line.

NONCONFORMITIES: Lots, structures, uses of land and structures, and characteristics of uses, which are prohibited under the terms of this ordinance, but were lawful at the date of this Ordinance's enactment.

PARKING SPACE, OFF-STREET: A space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room.

PRIVATE NONCOMMERCIAL RECREATIONAL OR CULTURAL FACILITY: A facility catering exclusively to members and their guests, or premises and buildings for recreational or athletic purposes which are not conducted primarily for gain; provided that any vending stands, merchandising, or commercial activities are conducted only as required for the membership of such club.

PROVISIONAL PERMITTED USES: A use which is generally held as appropriate and would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare throughout a zoning district when certain provisions as stated are met to minimize the use's affects on neighboring properties.

Source: Ord. 783, Sec. 1 (2006)

RETIREMENT COMMUNITIES OR ELDERLY HOUSING PROJECTS: A multiple residential structure or structures designed exclusively for use by elderly or retired persons. To fulfill this requirement at least one occupant of each unit must be retired or at least Fifty-five (55) years of age.

SALVAGE YARD: A place where waste, discarded or salvaged materials are brought, sold, exchanged, baled, packed, disassembled or handled; including auto wrecking yards, house wrecking yards, used material yards; but not including pawn shops, antique shops, purchase or storage of used furniture and household equipment, or the placing of used cars in operable condition.

SETBACK: The required distance between every structure and the front lot line, as prescribed in the district regulations of this Ordinance.

SIGNS: See Section 4-460 of this Ordinance for all definitions relating to signs.

STORY: That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused under-floor space is more than six (6)

feet above grade as defined herein for more than fifty percent (50%) of the total perimeter or is more than twelve (12) feet above grade as defined herein at any point, such basement, cellar or unused under-floor space shall be considered as a story.

STREET LINE: The right-of-way line of a street.

STRUCTURE: Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground.

SWIMMING POOL: A structure designed to be used for swimming which has a capacity of one thousand (1,000) gallons or more or which has a depth of over twenty-four (24) inches.

Source: Ord. 501, Sec. 4 (1996).

TEMPORARY USE: The use of land for a fixed period of time with the intent to discontinue such use upon the expiration of permitted time period.

Source: Ord. 916, Sec. 13 (2012)

TEMPORARY STRUCTURE: A structure without any foundation or footings and does not require a temporary building permit. Such building is constructed with the understanding that it will be removed when the permitted time has expired.

Source: Ord. 916, Sec. 13 (2012)

TRAVEL TRAILER: A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel and recreational purposes, having a body width not exceeding eight feet.

TOWNHOUSE: A single-family dwelling unit occupying its own lot but attached to one or more other units by a common wall or walls.

VARIANCE: A relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this Ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

YARD: An open space, other than a court, on the same lot with a building, unoccupied and unobstructed by any portion of a structure from 30 inches above the general ground level of the graded lot upward. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.

YARD, FRONT: A yard extending across the front of a lot between the side lot lines and extending from the front lot line to the front of the principal building or any projections thereof. The Front Yard shall be facing a public street. In the case of corner lots where two or more sides of a lot front on a street, the property owner shall determine which side shall be the front for the purpose of establishing setback requirements. In any required front yard, no fence or wall shall be permitted which materially impeded vision across such yard above the height of 30 inches, and no hedge or other vegetation shall be permitted which materially impedes vision across such yard between the heights or 30 inches and 10 feet.

DEPTH OF REQUIRED FRONT YARDS SHALL BE MEASURED: At right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding. Front and rear yard lines shall be parallel.

YARD, REAR: A yard extending across the rear of a lot, measured between the side lot lines, and being the minimum horizontal distance between the rear lot line and the rear of the principal building including any projections. On interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard. In the case of through lots and corner lots, there will be no rear yards, but only front and side yards.

YARD, SIDE: A yard extending from the front yard to the rear yard and being the space between the side lot line and the side of the main building including any projections.

YARD, SPECIAL: A yard behind any required yard adjacent to a public street, required to perform the same functions as a side or rear yard, but adjacent to a lot line so placed or oriented that neither the term "side yard" nor the term "rear yard" clearly applies. In such cases, the administrative official shall require a yard with minimum dimensions as generally required for a side yard or a rear yard in the district, determining which shall apply by the relation of the portion of the lot on which the yard is to be located to the adjoining lot or lots, with due regard to the orientation and location of structures and buildable areas thereon.

The diagram (Figure 1) on the following page illustrates location and methods of measuring yards on rectangular and non-rectangular lots.

Source: Ord. 435, Sec. 1 (1992).

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NON-RECTANGULAR LOTS

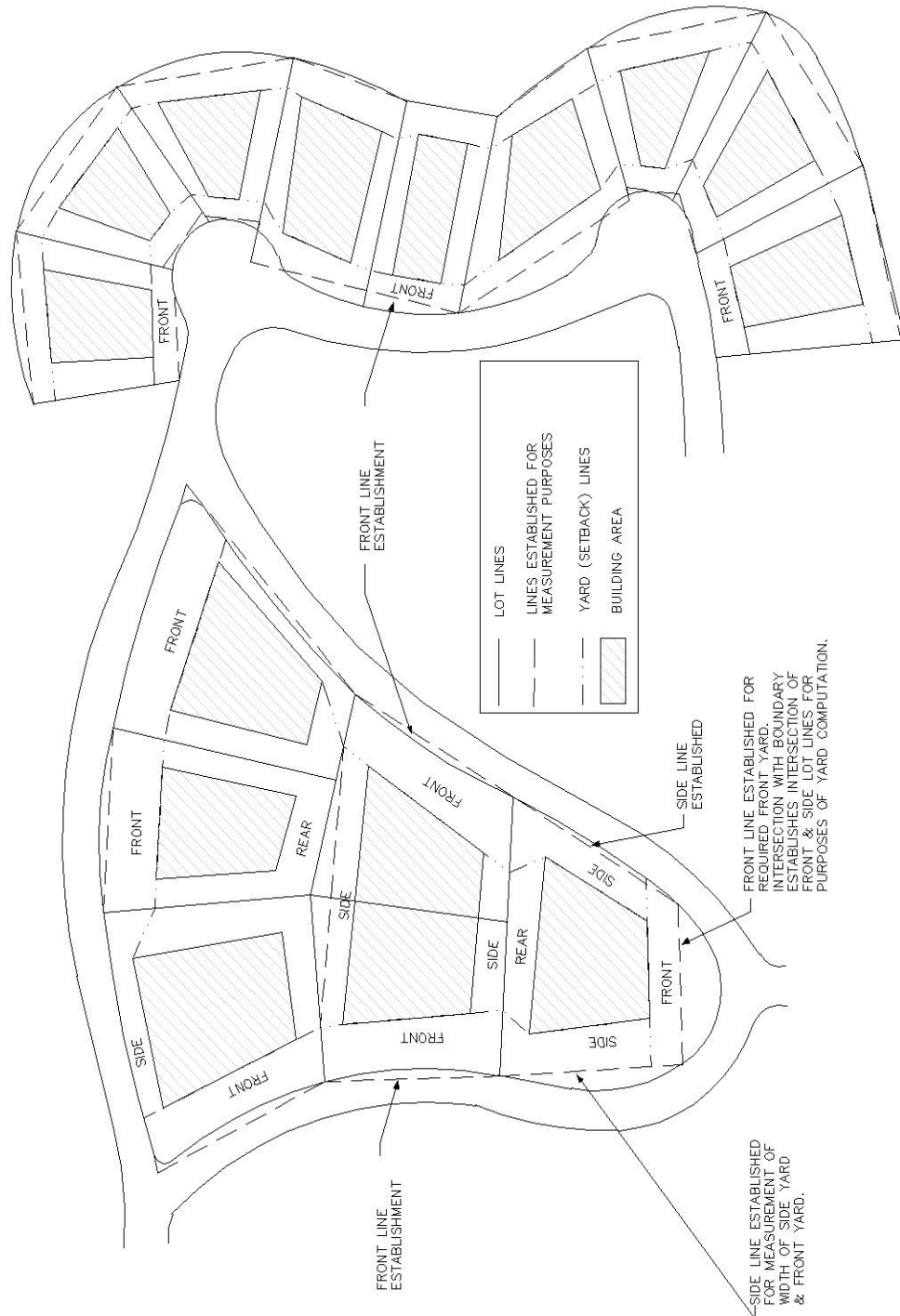


FIGURE 1

CHAPTER 4-300.

ESTABLISHMENTS OF DISTRICTS AND OFFICIAL ZONING MAP PROVISIONS.

Sections:

- 4-301. Establishment of Districts as Shown on Official Zoning Map.
- 4-302. Replacement of Official Zoning Map.
- 4-303. Rules for Interpretation of District Boundaries.

4-301. ESTABLISHMENT OF DISTRICTS AS SHOWN ON OFFICIAL ZONING MAP. The City is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance.

The Official Zoning Map shall be identified by the signature of the Mayor attested by the City Clerk, and bearing the seal of the City under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 4-300 of Ordinance 332 of the City of West Fargo, North Dakota," together with the date of adoption of this Ordinance.

If, in accordance with the provisions of this Ordinance and Chapter 40-47 of the North Dakota Century Code, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the City Commission certifying such changes. No amendment to this Ordinance which involves matter portrayed on the Official Zoning Map shall become effective until such change has been made on said map and the amending ordinance duly published.

No changes of any nature shall be made in the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this ordinance and punishable as provided under Section 4-570.

Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map which shall be located in the Office of the City Auditor shall be the final authority as to the current zoning status of land and water areas, buildings, and structures in the City.

(The amendment of this section involves the amendment to the Official Zoning Map)

4-302. REPLACEMENT OF THE OFFICIAL ZONING MAP. In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the City Commission may by resolution or ordinance adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The new Official Zoning Map shall be identified by the signature of the President of the Board of City Commissioners attested by the City Auditor, and bearing the seal of the City under the following words: "This is to certify that this Official Zoning Map adopted as part of Ordinance No. 1031 on March 16, 2015, supersedes and replaces the Official Zoning Map adopted February 19, 2007, as part of Ordinance 795 of the City of West Fargo, North Dakota." Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining, shall be preserved, together with all available records pertaining to its adoption or amendment.

Source: Ord. 565, Sec. 2 (1999); Ord. 717, Sec. 2 (2004); Ord. 795, Sec. 2 (2007); Ord. 1031, Sec. 1 (2015)

4-303. RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES. Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- (1) Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;
- (2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- (3) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
- (4) Boundaries indicated as approximately following city limits shall be construed as following such city limits;
- (5) Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
- (6) Boundaries indicated as parallel to or extensions of features indicated in subsections (1) through (5) above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;

- (7) Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by Subsections (1) through (7) above, the Board of Adjustment shall interpret the district boundaries;
- (8) Where a zoning district boundary line divides a lot which was in single ownership at the time of passage of this Ordinance, the Board of Adjustment may permit, as a permitted conditional use, the extension of the regulations for either portion of the lot not to exceed fifty (50) feet beyond the zoning district line into the remaining portion of the lot.
- (9) Whenever any street, alley, or other public way is vacated in the manner authorized by law, the zoned district adjoining each side of such street, alley or public way shall be automatically extended to the center of such vacation and all included in the vacation shall then and henceforth be subject to all regulations of the extended district.

CHAPTER 4-400

REGULATIONS

SECTIONS:

- 4-410. Application of Regulations.
- 4-420. District Regulations: General.
- 4-430. "R-1E" Rural Estate District
- 4-431 -
- 4-439. District Regulations: Special.
- 4-440. Supplementary District Regulations.
- 4-450. Off-Street Parking and Loading Requirements.
- 4-460. Sign Regulations.
- 4-470. Nonconforming Lots, Uses of Land, Structures, and Uses of Structures.

4-410. APPLICATION OF REGULATIONS.

Subsections:

- 4-411. Zoning Affects Every Building and Use.
- 4-412. Open Space, or Off-Street parking or Loading Space.
- 4-413. Yard and Lot Reduction Prohibited.
- 4-414. Zoning Upon Annexation.

4-411. ZONING AFFECTS EVERY BUILDING AND USE. No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all of the zoning regulations herein specified for the district in which it is located. No building or other structure shall hereafter be erected or altered:

- (1) to exceed the height or bulk;
- (2) to accommodate or house a greater number of facilities;
- (3) to occupy a greater percentage of lot area;
- (4) to have narrower or smaller rear yards, front yards, side yards, or other open spaces than herein required; or in any other manner contrary to the provisions of this Ordinance.

4-412. OPEN SPACE, OR OFF-STREET PARKING OR LOADING SPACE. No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Ordinance, shall be included as

part of a yard, open space, or off-street parking or loading space similarly required for any other building.

4-413. YARD AND LOT REDUCTION PROHIBITED. No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

4-414. ZONING UPON ANNEXATION. All territory which may hereafter be annexed to the City shall be considered to be zoned A-Agricultural District unless otherwise classified.

4-420 - 4-439. DISTRICT REGULATIONS: GENERAL.

Subsections:

4-421. "A" Agricultural District Regulations.

- 4-421.1. Statement of Intent.
- 4-421.2. Permitted Uses.
- 4-421.3. Conditionally Permitted Uses.
- 4-421.4. Yard Requirements.

4-421-A. "R-R" Rural Residential District.

- 4-421-A.1. Statement of Intent
- 4-421-A.2. Minimum Dimensional Requirements.
- 4-421-A.3. Permitted Uses.
- 4-421-A.4. Conditionally Permitted Uses.
- 4-421-A.5. Yard Requirements.
- 4-421-A.5. Other Applicable Regulations.

4-421-B. "R-1E" Rural Estate District.

- 4-421-B.1. Statement of Intent.
- 4-421-B.2. Minimum Dimensional Requirements.
- 4-421-B.3. Permitted Uses.
- 4-421-B.4. Conditionally Permitted Uses.
- 4-421-B.5. Yard Requirements.
- 4-421-B.6. Other Applicable Regulations.

4-421-C. "R-L1A" Large Lot Single-Family Dwelling

- 4-421-C.1. Statement of Intent.
- 4-421-C.2. Permitted Uses.
- 4-421-C.3. Conditionally Permitted Uses.
- 4-421-C.4. Yard Requirements.
- 4-421-C.5. Other Applicable Regulations.

4-422. "R-1A" Single-Family Dwelling District.

- 4-422.1. Statement of Intent.
- 4-422.2. Permitted Uses.
- 4-422.3. Conditionally Permitted Uses.
- 4-422.4. Yard Requirements for the R-1A District.
- 4-422.5. Other Applicable Regulations.

4-422-A. "R-1B" Special Single-Family Dwelling District.

- 4-422-A.1. Statement of Intent.
- 4-422-A.2. Permitted Uses.
- 4-422-A.2.A. Provisional Permitted Users.
- 4-422-A.3. Conditionally Permitted Uses.
- 4-422-A.4. Yard Requirements for the R-1B District.
- 4-422-A.5. Other Applicable Regulations.

4-423. "R-1" One and Two-Family Dwelling District.

- 4-423.1. Statement of Intent.
- 4-423.2. Permitted Uses.
- 4-423.3. Conditionally Permitted Uses.
- 4-423.4. Yard Requirements for the R-1 District.
- 4-423.5. Other Applicable Regulations.

4-423-A. "R-1S" Special One and Two-Family Dwelling District.

(Source: Ord. 808, Sec. 3 [2007])

- 4-423-A.1. Statement of Intent.
- 4-423-A.2. Permitted Uses.
- 4-423-A.2.A Provisional Permitted Users.
- 4-423-A.3. Conditionally Permitted Uses.
- 4-423-A.4. Yard Requirements for the R-1S District.
- 4-423-A.5. Other Applicable Regulations.

4-423-B. "R-1SM" Mixed One and Two-Family Dwelling District.

(Source: Ord. 866, Sec. 1 [2010])

- 4-423-B.1. Statement of Intent.
- 4-423-B.2. Permitted Uses.
- 4-423-B.2.A Provisional Permitted Users.
- 4-423-B.3. Conditionally Permitted Uses.
- 4-423-B.4. Yard Requirements for the R-1SM District.
- 4-423-B.5. Other Applicable Regulations.

4-424. "R-2" Limited Multiple Dwelling District.

- 4-424.1. Statement of Intent.
- 4-424.2. Permitted Uses.
- 4-424.3. Conditionally Permitted Uses.
- 4-424.4. Yard Requirements for the R-2 District.
- 4-424.5. Other Applicable Regulations.

4-425. "R-3" Multiple Dwelling District.

- 4-425.1. Statement of Intent.
- 4-425.2. Permitted Uses.
- 4-425.3. Conditionally Permitted Uses.
- 4-425.4. Yard Requirements for the R-3 District.
- 4-425.5. Other Applicable Regulations.

4-426. "R-4" Mobile Home District.

- 4-426.1. Statement of Intent.
- 4-426.2. Permitted Uses.
- 4-426.3. Applicable Regulations.
- 4-426.4. Dimensional Requirements.
- 4-426.5. Other Applicable Regulations.

4-426-A. R-5: Mobile Home (Manufactured Home) Subdivision District.

4-427. "C" Light Commercial District.

- 4-427.1. Statement of Intent.
- 4-427.2. Permitted Uses.
- 4-427.3. Conditionally Permitted Uses.
- 4-427.4. Yard Requirements for the C District.
- 4-427.5. Other Applicable Regulations.

4-427-A. "C-OP" Commercial Office Park District

- 4-427-A.1. Statement of Intent.
- 4-427-A.2. Permitted Uses.
- 4-427-A.3. Conditionally Permitted Uses.
- 4-427-A.4. Site Development Standards.
- 4-427-A.5. Other Applicable Regulations.

4-428. "HC" District or Heavy Commercial District.

(Source: Ord. 1045, Sec. 1 & 2 [2015])

- 4-428.1. Statement of Intent.
- 4-428.2. Permitted Uses.
- 4-428.2A. Conditionally Permitted Uses.
- 4-428.3. Yard Requirements for the HC District.
- 4-428.4. Other Applicable Regulations.

4-428-A. "LI" District or Light Industrial District.

(Source: Ord. 1045, Sec. 3 [2015])

- 4-428-A.1. Statement of Intent.
- 4-428-A.2. Permitted Uses.
- 4-428-A.3. Conditionally Permitted Uses.
- 4-428-A.4. Yard Requirements for the LI District.
- 4-428-A.5. Other Applicable Regulations.

4-429. "M" District or Heavy Industrial District.

- 4-429.1. Statement of Intent.
- 4-429.2. Permitted Uses.
- 4-429.2A. Conditionally Permitted Uses.
- 4-429.3. Prohibited Uses.
- 4-429.4. Yard Requirements.
- 4-429.5. Other Applicable Regulations.
- 4-429.6. Adult Entertainment Centers -- Location Restricted.

4-431. "CO" District or Corridor Overlay District.

- 4-431.1. Statement of Intent.
- 4-431.2. Permitted Uses.
- 4-431.3. Conditionally Permitted Uses.
- 4-431.4. Yard Requirements for the CO District.
- 4-431.5. Lot Design Standards.
- 4-431.6. Other Applicable Regulations.

4-431-A. "CO-I" Interstate Corridor Overlay District

- 4-431-A.1. Statement of Intent.
- 4-431-A.2. Permitted Uses.
- 4-431-A.3. Conditionally Permitted Uses.
- 4-431-A.4. Plan Review and Approval.
- 4-431-A.5. Site Development Standards.

4-431-B. "CO-R" Redevelopment Corridor Overlay District.

- 4-431-B.1. Statement of Intent.
- 4-431-B.2. Permitted Uses.

- 4-431-B.3. Conditionally Permitted Uses.
- 4-431-B.4. Yard Requirements for the CO-R District.
- 4-431-B.5. Lot Design Standards.
- 4-431-B.6. Other Applicable Regulations.

4-431-C. "CO-SR" District or Sheyenne River Corridor Overlay District. (Source: Ord. 916, Sec. 65 (2012))

- 4-431-C.1. Statement of Intent.
- 4-431-C.2. Building Control Line and Use Restrictions.
- 4-431-C.3. Relaxation of Use Restrictions.
- 4-431-C.4. Existing Nonconforming Uses and Structures.
- 4-431-C.5. Landscape Standards.

4-431-D. "CO-S" District or Sheyenne Street Corridor Overlay District. (Source: Ord. 916, Sec. 66 (2012))

- 4-431-D.1. Statement of Intent.
- 4-431-D.2. Area Definition.
- 4-431-D.3. Permitted Uses.
- 4-431-D.4. Conditionally Permitted Uses.
- 4-431-D.5. Site Design Standards.

4-431-E. "CO-M" District or Main Avenue Overlay District. (Source: Ord. 916, Sec. 67 (2012))

- 4-431-E.1. Statement of Intent.
- 4-431-E.2. Permitted Uses.
- 4-431-E.3. Conditionally Permitted Users.
- 4-431-E.4. Yard Requirements for the CO-M District.
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4-432. "PUD" District for Planned Unit Development Project.

- 4-432.1. Statement of Intent.
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- 4-433.1. Statement of Intent.
- 4-433.2. Permitted Uses.
- 4-433.3. Conditionally Permitted Uses.
- 4-433.4. Yard Requirements.

4-434. RESERVED FOR FUTURE USE.

4-435. RESERVED FOR FUTURE USE.

4-436. RESERVED FOR FUTURE USE.

4-437. RESERVED FOR FUTURE USE.

4-438. RESERVED FOR FUTURE USE.

4-439. RESERVED FOR FUTURE USE.

4-421. "A" DISTRICT OR AGRICULTURAL DISTRICT.

Source: Ord. 748, Sec. 10 (2005)

4-421.1. Statement of Intent. The provisions of the "A" District are intended to establish and preserve areas for agricultural uses, wherein certain recreational, residential, and public activities which do not significantly change the natural character of the land are permitted.

4-421.2. Permitted Uses.

1. Commercial agriculture and horticulture as defined by this Ordinance, to exclude feedlots and poultry facilities.
2. Farm buildings and accessory structures.
3. Single family dwellings which are accessory to farming operations and which are located on farmsteads in existence at the time this Ordinance is passed.
4. Forestry, grazing, and gardening.
5. Essential services.
6. Home occupations.
7. Historic sites as designated by the City of West Fargo or the State Historical Society of North Dakota.
8. Public parks and recreational facilities, wildlife and game management area and refuges.
9. Municipal utility structures and uses for the provision of municipal utilities and services.
10. Public utility and service structures (non-municipal), which are located and constructed at such places and in such manner that they will not disrupt the operation of any one farm and will not interfere with the conduct of agriculture by limiting or interfering with the access to fields or the effectiveness and efficiency of the farmer and farm equipment including crop-spraying aircraft.

4-421.3. Conditionally Permitted Uses. Any conditional use located in this district shall be sited on a separately platted parcel in accordance with the subdivision regulations of the City of West Fargo, and the use shall not be one to which the noise, odor, dust, or chemical residues of commercial agriculture or horticulture might result in creation or establishment of a nuisance or trespass. The following conditional uses maybe located in the A District subject to the provisions and requirements hereinafter imposed for each use and subject further to review and approval by the City as required by Section 4-550 of this Ordinance:

1. Agricultural service establishments primarily engaged in performing agricultural, animal husbandry, or horticultural services on a fee or contract basis including, but not limited to hay-baling and threshing; horticultural services; crop dusting; grain cleaning and drying; harvesting and plowing; milling and storage of grain; veterinary services; boarding and training of horses; and roadside stands for the sale of agricultural produce grown on the site.
 - a. An agricultural service establishment shall be incidental and necessary to the conduct of agriculture within the district.
 - b. All agricultural service establishments shall be located at least 100 feet from any driveway affecting access to a farm dwelling or field and at least 500 feet from any single-family dwelling.
 - c. All agricultural service establishments shall be screened on the perimeter of the establishment by a solid fence, wall, or natural vegetation not less than six feet in height.
2. Churches, religious institutions and places of worship, cemeteries, airports, fairgrounds, archery ranges, gun clubs, schools, local government buildings and facilities, and government-owned facilities for the maintenance of roads and highways when necessary to serve the immediate vicinity.
3. Non-farm single-family residential dwellings may be permitted on lots or parcels of land for which a deed has been recorded in the office of the Cass County Register of Deeds upon or prior to the effective date of this Ordinance, or a lot or parcel of land that would have been a lot of record if the document conveying the lot had been recorded on the date of its execution, provided they meet all applicable standards and requirements of this Ordinance and all other applicable city, township, and county regulations and ordinances, subject to the following:
 - a. The property shall be platted in accordance with the subdivision regulations of the City of West Fargo.
 - b. Each lot developed shall contain no more than one (1) single-family home.
 - c. Each lot developed shall be a minimum of one acre in area. A larger plot size may be required by the City if necessary for the safe operation of individual wells and septic systems.

- d. The driveway serving the property shall meet City access standards.
 - e. All non-farm residential buildings shall be set back a minimum of 300 feet from the nearest farm building.
- 4. Above ground petroleum storage tanks. Such above ground petroleum storage tanks are prohibited in all other districts other than the A and M Districts.
 - 5. Single-family structures on newly created lots of forty (40) or more acres provided that the property is platted in accordance with the subdivision regulations of the City of West Fargo.
 - 6. Landscaping businesses, greenhouses, and plant nurseries.
 - 7. Temporary or permanent industrial wood burners, including air curtain destructors, subject to the following conditions:
 - a. For a permanent site, the site is fenced with a sight obscuring fence and screened if necessary to keep materials out of sight.
 - b. The site is located a minimum of 2,640 feet from any residential or neighboring business structure.
 - c. The waste wood products may not be stored on the site for more than two (2) months. For a permanent site, all waste wood products on site must be disposed of within a two (2) month period. At the time the site is completely cleared, another two-month cycle of storage may begin. An extension to the two-month period may be granted by the Fire Chief during the high fire risk times when burning is not allowed.
 - d. The use has received State Health Department and local Fire Department approval.
 - e. A permit for a temporary site may not exceed sixty (60) days, and only two (2) temporary permits may be granted for the same site in any year. The 60-day period may be extended by the Fire Chief if during that period burning is not allowed because of high risk conditions.
 - f. Other conditions as deemed necessary.
 - 8. Animal kennels and shelters.

Source: Ord. 916, Sec. 14 (2012)

4-421.4. Yard Requirements.

- a. Minimum Lot Size: - Commercial/agricultural and horticulture uses - none;
 - Single family dwellings on lots of record - 1 acre;
 - Single family dwellings on newly created lots - 40 acres
 - Other uses - 10 acres
- b. Minimum Lot Width 300 feet
- c. Minimum Lot Depth 300 feet
- d. Minimum Side Yard⁽¹⁾ 20 feet
- e. Minimum Rear Yard 50 feet
- f. Minimum Front Yard⁽²⁾ :- Local: 120' from centerline or 40' from the established right-of-way, whichever is greater.
 - Collector: 150' from centerline or 75' from the established right-of-way, whichever is greater.
 - Arterial: 150' from centerline or 75' from the established right-of-way, whichever is greater.
- g. Maximum Height For farm uses - none; for non-farm uses - 35 feet

⁽¹⁾ Side yard setback for street side of corner lots shall be the same as required for front yards.

⁽²⁾ Whichever requires the greater setback.

4-421-A. "R-R" DISTRICT OR RURAL RESIDENTIAL DISTRICT.

Source: Ord. 748, Sec. 11 (2005)

4-421-A.1. STATEMENT OF INTENT. The provisions of the "R-R", Rural Residential District is to provide area for the development of single family homes on large lots outside of the urban service area (area which is intended to be served with municipal services within a ten-year period). This district may be applied to areas designated as Rural Residential or Agricultural Preservation on the Land Use Plan of the City's Comprehensive Plan. These areas are not protected by the Sheyenne Diversion project except for existing subdivisions, so on-site flood protection is required in conjunction with most development. Cluster residential development is encouraged in order to more easily provide for flood protection of structures, while preserving more open space.

4-421-A.2. MINIMUM DIMENSIONAL REQUIREMENTS. The minimum area for this district shall be fifteen (15) acres for areas designated as Rural Residential on the City's Land Use Plan and forty (40) acres for areas designated as Agricultural Preservation on the Plan.

4-421-A.3. PERMITTED USES.

1. Single family detached dwellings.
2. State-licensed group homes serving six (6) or fewer developmentally disabled persons.
3. Publicly owned and operated parks, playgrounds, and recreational facilities.
4. Essential services and public buildings.
5. Home child care facilities serving up to a maximum of seven (7) children.
6. Churches, religious institutions and places of worship.

Source: Ord. 916, Sec. 15 (2012)

4-421-A.3-A. PROVISIONAL PERMITTED USES. The following uses may be permitted in the R-R District subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City Planning Office:

1. Child care home facilities in single family homes with up to twelve (12) children, excluding the children of the child care provider, subject to the following provisions:
 - a. The use of the dwelling unit for the child care facility shall be clearly incidental and subordinate to its use for residential purposes by its occupants.

- b. The rear yard shall be fenced with a solid fence. In the event that an existing fence is in place which is not a solid fence, the Planning Office may allow the existing fence to continue until such time that there is a complaint from an adjoining property owner. Upon receiving a complaint, the fence shall be changed to a solid fence.
- c. The children shall be dropped off and picked up in the driveway only.
- d. Adequate off-street parking shall be provided for the principal use, and child care facility including space(s) for dropping off children and employees.
- e. The hours of operation are limited to 6:00 a.m. to 10:00 p.m.

Source: Ord. 783, Sec. 8 (2006); Ord. 1049, Sec. 6 (2015)

4-421-A.4 CONDITIONALLY PERMITTED USES. The following uses may be permitted in the "R-R" District subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City Commission as required by Section 4-550 of this ordinance.

- 1. Private noncommercial recreational or cultural facilities, subject to the following conditions:
 - a. The proposed site for any of the uses permitted herein which would attract persons from, or are intended to serve, areas beyond the immediate neighborhood shall have at least one property line abutting a major thoroughfare, either existing or proposed, and the site shall be so planned so as to provide all ingress and egress directly onto or from said major thoroughfare.
 - b. Front, side and rear yards shall be at least sixty (60) feet wide, and shall be landscaped in trees, shrubs, and grass. All such landscaping shall be maintained in a healthy condition. There shall be no parking or structures permitted in these yards, except required entrance drives and those walls used to obscure the use from abutting residential districts.
- 2. Accessory buildings greater than 1,600 square feet, provided they are in character with the development patterns of the subdivision.

3. Clustered Rural Subdivisions, provided that:
 - a. The proposed area is unlikely to be served by City utilities within the next ten (10) years, as determined by the City Commission.
 - b. The Subdivision is designed to provide for resubdivision at such time that City utilities become available.
 - c. Lot sizes of less than five acres require provision for common sanitary waste treatment, such as common septic drainfields or other designs approved by the City Engineer and Cass County Health Department.
 - d. In clustered rural subdivisions, individual building lot sizes may be reduced to 15,000 square feet with remaining lot area and subdivision area requirements set aside as conservation areas which may be utilized in the future for urban development patterns.
 - e. Streets shall be improved, but may be built to a rural design standard, subject to proper drainage control.
 - f. The subdivision shall include covenants attached to each building lot, requiring house construction, which will accommodate convenient connection to future City utilities.
 - g. At least fifty percent (50%) of the land in the subdivision shall remain as open space to be used for agricultural crop production, recreation, or scenic conservation. Ownership of the open space shall be in common among the building lot owners.
 - h. The developer shall enter into a development contract with the City regulating the development process and each of the standards applicable to future residents of the subdivision.
4. Farm animals, provided the lots in the subdivision/development have a minimum of two acres. The number of animals allowed is one animal for the first two acres, plus one additional animal for each additional acre of lot area. Each lot may be reviewed individually or the subdivision or lots being rezoned may be reviewed as part of the rezoning or conditional use application.

Source: Ord. 1049, Sec. 7 (2015)

4-421-A.5. YARD REQUIREMENTS.

	<u>One- Family</u>	<u>Accessory Buildings</u>	<u>Other Buildings</u>
Lot Area Minimum (sq ft)	2.5 acres ⁽¹⁾		
Lot Width Minimum (ft)	150		
Lot Depth Minimum (ft)	200		
Front Yard Minimum (ft) ⁽²⁾	40	40	40
Rear Yard Minimum (ft)	30	30	30
Side Yard Minimum (ft) ⁽³⁾	20	20	20
Maximum Lot Coverage ⁽⁴⁾	15%		
Maximum Height (ft)	35	35	⁽⁵⁾
Net Density	1 unit per 3 acres ⁽⁶⁾		

(1) Subdivisions within areas designated as Agricultural Preservation according to the Land Use Plan shall have a minimum lot size of 10 acres. Clustered rural subdivisions may have reduced lot sizes as provided for above.

(2) Front yard setbacks from existing or future streets shall be forty (40) feet from the road (street) right-of-way line, or the following, whichever is greater: Seventy-five (75) feet from the centerline of the street for local streets, ninety (90) feet for collector or minor arterial streets and one hundred fifteen (115) feet for primary arterial streets.

(3) On corner lots, a side yard facing a public way shall be a minimum of thirty (30) feet.

(4) For any main building and all accessory buildings.

(5) For any building over thirty-five (35) feet in height, required yards shall be increased by one (1) foot for every two (2) feet of building height over the limit.

(6) The net density for subdivisions within areas designated as Agricultural Preservation according to the Land Use Plan shall be no greater than one unit per ten (10) acres.

4-421-A.6. OTHER APPLICABLE REGULATIONS.

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

Any subdivision which is submitted, shall have an accompanying area development plan showing how development could occur on each lot at a density suitable for a single-family residential district should the area ever be served by municipal sanitary sewer and/or water. Also, an area plan shall be submitted showing the sewer and water system(s) or septic tanks/drain fields and well placement(s) with approval by the County Sanitarian.

4-421-B. "R-1E" DISTRICT OR RURAL ESTATE DISTRICT.

Source: Ord. 748, Sec. 11 (2005)

4-421-B.1. STATEMENT OF INTENT. This district is intended to provide low-density, limited-growth residential areas. It is designed to accommodate residential development opportunities for those who desire low-density or estate living and are willing to live in more remote locations such as in the City's extraterritorial jurisdiction, and to assume the costs of providing many of their own services and amenities. In some of these areas municipal services may never be provided because the City must concentrate its limited resources in areas where more intense future development is logical. The low density allowed in this district is needed to preserve and support the existing public infrastructure. Other areas, however, may start as rural residential in character and later be annexed into the City, which requires forethought on the part of City and developer on lot and street layout to provide for further splitting of lots. The low densities permitted in this district generally permit on-site water supply and waste disposal systems, though in some cases soil conditions may require community type systems. This may be done through rural water and sewer districts.

4-421-B.2. MINIMUM DIMENSIONAL REQUIREMENTS. The minimum area for this district shall be ten (10) acres.

4-421-B.3. PERMITTED USES.

1. Single-family detached dwellings.
2. Schools, churches, religious institutions and places of worship.
3. State-licensed group homes serving six (6) or fewer developmentally disabled persons.
4. Publicly-owned and operated parks, playgrounds, and recreational facilities.
5. Essential services and public buildings.
6. Accessory buildings, provided that they shall be located as required in Section 4-442 of this ordinance.
7. Home occupations, provided they shall be operated as required in Section 4-448 of this ordinance.
8. Home child care facilities serving up to a maximum of seven (7) children.

Source: Ord. 916, Sec. 16 (2012)

4-421-B.3.A. PROVISIONAL PERMITTED USES. Any provisional permitted use allowed in the "R-R" District, subject to the same provisions.

Source: Ord. 783, Sec. 9 (2006)

4-421-B.4. CONDITIONALLY PERMITTED USES. The following uses may be permitted in the R-1E District subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City as required by Section 4-550 of this ordinance.

1. Private non-commercial recreational or cultural facilities, subject to the following conditions:
 - a. The proposed site for any of the uses permitted herein which would attract persons from, or are intended to serve, areas beyond the immediate neighborhood shall have at least one property line abutting a major thoroughfare, either existing or proposed, and the site shall be so planned so as to provide all ingress and egress directly onto or from said major thoroughfare.
 - b. Front, side and rear yards shall be at least sixty (60) feet wide, and shall be landscaped in trees, shrubs, and grass. All such landscaping shall be maintained in a healthy condition. There shall be no parking or structures permitted in these yards, except required entrance drives and those walls used to obscure the use from abutting residential districts.
2. Retirement, Assisted Living, Basic Care, Nursing or Convalescent Homes: Not to exceed a height of two (2) stories, when the following conditions are met:
 - a. The site shall be so developed as to create a land-to-building ratio on the lot or parcel whereby for each one (1) bed in the convalescent home there shall be provided not less than one thousand five hundred (1,500) square feet of open space. The one thousand five hundred (1,500) square feet of land area per bed shall provide for landscape setting, off-street parking, service drives, loading space, yard requirements and space required for accessory uses. The one thousand five hundred (1,500) square feet requirement is over and above the building area.
 - b. No building shall be closer than forty (40) feet from any property line.
 - c. The majority of residents are age fifty-five (55) and older and there is a minimum of one full time equivalent employee per every six residents.
 - d. The services of a licensed registered nurse are available to all residents.

- e. The applicant provides the city planner with a detailed plan showing the activities and personnel that will be available to residents of the facility.
- 4. Farm animals, provided the lots in the subdivision/development have a minimum of two acres. The number of animals allowed is one animal for the first two acres, plus one additional animal for each additional acre of lot area.
- 5. Accessory buildings greater than 1,000 square feet provided they are in character with the development patterns of the subdivision.
- 6. Clustered Rural Subdivisions, provided that:
 - a. The proposed area is unlikely to be served by City utilities within the next ten (10) years, as determined by the City Commission.
 - b. The Subdivision is designed to provide for resubdivision at such time that City utilities become available.
 - c. Lot sizes of less than five acres require provision for common sanitary waste treatment, such as common septic drainfields or other designs approved by the City Engineer.
 - d. In clustered rural subdivisions, individual building lot sizes may be reduced to 15,000 square feet, with remaining lot area and subdivision area requirements set aside as conservation areas which may be utilized in the future for urban development patterns.
 - e. Streets shall be paved, but may be built to a rural design standard, subject to proper drainage control.
 - f. The subdivision shall include covenants attached to each building lot, requiring house construction, which will accommodate convenient connection to future City utilities.
 - g. At least fifty percent (50%) of the land in the subdivision shall remain as open space to be used for agricultural crop production, recreation, or scenic conservation. Ownership of the open space shall be in common among the building lot owners.
 - h. The developer shall enter into a development contract with the City regulating the development

process and each of the standards applicable to future residents of the subdivision.

Source: Ord. 1049, Sec. 8 (2015)

4-421-B.5. YARD REQUIREMENTS.

	<u>One-Family</u>	<u>Accessory Buildings</u>	<u>Other Buildings</u>
1. Lot Area Minimum (sq ft)	43,560 ⁽¹⁾		
2. Lot Width Minimum (ft)	120		
3. Lot Depth Minimum (ft)	200		
4. Front Yard Minimum (ft) ⁽²⁾	30	30	30
5. Rear Yard Minimum (ft)	30	30	30
6. Side Yard Minimum (ft)	10 ⁽³⁾	10 ⁽³⁾	10
7. Maximum Lot Coverage ⁽⁴⁾	15%		
8. Maximum Height (ft)	35	20	⁽⁵⁾
9. Net Density	1 unit per acre.		

(1) Clustered rural subdivisions may have reduced lot sizes as provided for in section 4-421-B.4

(2) Front yard setbacks from existing or future streets shall be thirty (30) feet from the roadway (street) right-of-way line, or the following, whichever is greater: seventy-five (75) feet from the centerline of the street for local streets, ninety (90) feet for collector or minor arterial streets and one hundred fifteen (115) feet for primary arterial streets.

(3) On corner lots, a side yard facing a public way shall be a minimum of thirty (30) feet.

(4) For any main building and all accessory buildings.

(5) For any building over thirty-five (35) feet in height, required yards shall be increased by one (1) foot for every two (2) feet of building height over the limit.

4-421-B.6. OTHER APPLICABLE REGULATIONS.

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

Any subdivision which is submitted shall have an accompanying area development plan showing how development could occur on each lot at a density suitable for a single-family residential district should the area ever be annexed into the City.

Area Plan showing sewer and water system or septic tank/drainfield and well placement with approval by County Sanitarian.

4-421-C. "R-L1A" DISTRICT OR LARGE LOT SINGLE-FAMILY DWELLING DISTRICT.

Source: Ord. 748, Sec. 11 (2005)

4-421-C.1. Statement of Intent. The provisions of the R-L1A District are intended to apply to residential neighborhoods with very low density and nearly exclusively single family dwellings on larger urban lots.

4-421-C.2. Permitted Uses.

1. Single-family detached dwellings.
2. Publicly owned and operated parks, playgrounds, and recreational facilities.
3. Essential services and public buildings.
4. State-licensed group homes serving six or fewer developmentally disabled persons.
5. Accessory buildings, provided that they shall be located as required in Section 4-442 of this Ordinance.
6. Home occupations, provided that they shall be operated as required in Section 4-448 of this Ordinance.
7. Family Child Care Home.

4-421-C.2.A. Provisional Permitted Uses. Any provisional permitted use allowed in the "R-1E" District, subject to the same provisions.

Source: Ord. 783, Sec. 10 (2006)

4-421-C.3. Conditionally Permitted Uses: The following uses may be permitted in the R-L1A District subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City as required by Section 4-550 of this Ordinance.

1. Schools, churches, religious institutions and places of worship subject to the following conditions:
 - a. The site is located with frontage on, and has access to, a collector or arterial street and does not require the use of a local street for access or parking.
 - b. All principal and accessory uses maintain setbacks which are double those otherwise applying within this district.

- c. Parking areas are screened from neighboring residential areas by a landscape planting providing year-round screening at least four feet in height.
- d. Site and building lighting is designed to minimize illumination of adjoining property, and the light sources are hooded to avoid direct view by neighboring residential areas.

Source: Ord. 783, Sec. 4 (2006); Ord. 916, Sec. 17 (2012); Source: Ord. 1049, Sec. 9 (2015)

4.421-C.4. Yard Requirements for the R-L1A District.

	<u>One-Family</u>	<u>Accessory Buildings</u>	<u>Other Buildings</u>
1. Lot Area Minimum (ft ²)	10,000		
2. Lot Width Minimum (ft)	75		
3. Lot Depth Minimum (ft)	120		
4. Front Yard Minimum (ft)	25	25	25
5. Rear Yard Minimum (ft)	30	3	30
6. Side Yard Minimum (ft)	6 ⁽¹⁾	3 ⁽¹⁾	10 ⁽¹⁾
7. Maximum Lot Coverage ⁽²⁾	30%		20%
8. Maximum Height (ft)	30	15	25 ⁽³⁾
9. Minimum Green Area ⁽⁴⁾	30%		30%

⁽¹⁾ On corner lots, a side yard facing a public way shall be a minimum of 12 feet, except when a driveway to a garage is located in said side yard, in which case, the side yard shall be a minimum of 20 feet. An accessory building or use which includes a driveway on the street side shall maintain the same setback requirements as required for the principal use.

⁽²⁾ For any main building and all accessory buildings. Impervious surface areas shall be limited to a maximum of 70%.

⁽³⁾ For any building over 30 feet in height, required yards shall be increased by one (1) foot for every two (2) feet of building height over the limit.

⁽⁴⁾ Green area coverage shall apply to the front yard, independently, and to the entire parcel in aggregate.

Source: Ord. 916, Sec. 18 (2012)

4.421-C.5. Other Applicable Regulations:

Section 4-440 Supplementary District Regulations
 Section 4-450 Off-Street Parking and Loading Requirements
 Section 4-460 Sign Regulations

4-422. "R-1A" DISTRICT OR SINGLE-FAMILY DWELLING DISTRICT.

4-422.1. Statement of Intent. The provisions of the R-1A District are intended to apply to neighborhoods with low density, wherein certain educational, religious, recreational and other activities compatible with residential development are permitted.

4-422.2. Permitted Uses.

1. Single-family detached dwellings.
2. Publicly owned and operated parks, playgrounds, and recreational facilities.
3. Schools, churches, religious institutions and places of worship.
4. Essential services and public buildings.
5. State-licensed group homes serving six or fewer developmentally disabled persons.
6. Accessory buildings, provided that they shall be located as required in Section 4-442 of this Ordinance.
7. Home occupations, provided that they shall be operated as required in Section 4-448 of this Ordinance.
8. Family Child Care Home.

Source: Ord. 571, Sec. 2 (1999); Ord. 916, Sec. 19 (2012).

4-422.2.A. Provisional Permitted Uses. Any provisional permitted use allowed in the "R-1A" District, subject to the same provisions.

Source: Ord. 783, Sec. 11 (2006)

4-422.3. Conditionally Permitted Uses: The following uses may be permitted in the R-1A District subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City Commission as required by Section 4-550 of this Ordinance.

1. Pre-School Facilities and Child Care Centers licensed by the State Department of Human Services, not within homes, but intended for repurposed schools and churches or redevelopment.
2. Private Non-Commercial recreational or cultural facilities; subject to the following conditions:
 - a. The proposed site for any of the uses permitted herein which would attract persons from, or are intended to serve, areas beyond the immediate neighborhood shall have at least one property line abutting a major thoroughfare, either existing or

proposed, and the site shall be so planned so as to provide all ingress and egress directly onto or from said major thoroughfare.

- b. Front, side and rear yards shall be at least sixty (60) feet wide, and shall be landscaped in trees, shrubs, and grass. All such landscaping shall be maintained in a health condition. There shall be no parking or structures permitted in these yards, except required entrance drives and those walls used to obscure the use from abutting residential districts.
3. Retirement, Assisted Living, Basic Care, Nursing, or Convalescent Homes: Not to exceed a height of two (2) stories, when the following conditions are met:
 - a. The site shall be so developed as to create a land-to-building ratio on the lot or parcel whereby for each one (1) bed in the convalescent home there shall be provided not less than fifteen hundred (1,500) square feet of open space. The 1,500 square feet of land area per bed shall provide for landscaped setting, off-street parking, service drives, loading space, yard requirements and space required for accessory uses. The 1,500 square feet requirement is over and above the building area.
 - b. No building shall be closer than forty (40) feet from any property line.
 - c. The majority of residents are age fifty-five (55) and older and there is a minimum of one full time equivalent employee per every six residents.
 - d. The services of a licensed registered nurse are available to all residents.
 - e. The applicant provides the city planner with a detailed plan showing the activities and personnel that will be available to residents of the facility.
 4. Senior centers and senior programming facilities.

Source: Ord. 998, Sec. 1 (2014); Ord. 1049, Sec. 10 (2015)

4.422.4. Yard Requirements for the R-1A District.

	<u>One-Family</u>	<u>Accessory Buildings</u>	<u>Other Buildings</u>
a. Lot Area Minimum (ft ²)	6,000		
b. Lot Width Minimum (ft)	60		

c.	Lot Depth Minimum (ft)	100		
d.	Front Yard Minimum (ft)	25	25	25
e.	Rear Yard Minimum (ft)	30	3	30
f.	Side Yard Minimum (ft)	6 ⁽¹⁾	3 ⁽¹⁾	10
g.	Maximum Lot Coverage ⁽²⁾	30%		
h.	Maximum Height (ft)	30	15	⁽³⁾
i.	Minimum Green Area ⁽⁴⁾	30%		30%

⁽¹⁾ On corner lots, a side yard facing a public way shall be a minimum of 12 feet, except when a driveway to a garage is located in said side yard, in which case, the side yard shall be a minimum of 20 feet, except for lots of 50 feet or less, in which case the minimum setback for the garage shall be 18 feet. In this case, the house may be 12 feet, but garage must be a minimum of 20 feet on lots greater in width than 50 feet, or 18 feet on lots 50 feet or less in width.

⁽²⁾ For any main building and all accessory buildings. Impervious surface areas shall be limited to a maximum of 70%.

⁽³⁾ For any building over 35 feet in height, required yards shall be increased by one (1) feet for every two (2) feet of building height over the limit.

⁽⁴⁾ Green area coverage shall apply to the front yard independently and to the entire parcel in aggregate.

Source: Ord. 435, Sec. 2 (1992); Ord. 916, Sec. 20 (2012).

4.422.5. Other Applicable Regulations:

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-422-A. "R-1B" DISTRICT OR SPECIAL SINGLE-FAMILY DWELLING DISTRICT.

Source: Ord. 809, Sec. 1 (2007)

4-422-A.1. Statement of Intent. The provisions of the R-1B District are intended to apply to more traditional neighborhoods with low density, which provides for reduced front yards and higher design standards to accentuate the residential dwelling appeal and de-accentuate the attached garages, wherein certain educational, religious, recreational and other activities compatible with residential development are permitted.

4-422-A.2. Permitted Uses.

1. Single-family detached dwellings.
2. Publicly owned and operated parks, playgrounds, and recreational facilities.
3. Schools, churches, religious institutions and places of worship.
4. Essential services and public buildings.
5. State-licensed group homes serving six or fewer developmentally disabled persons.
6. Accessory buildings, provided that they shall be located as required in Section 4-442 of this Ordinance.
7. Home occupations, provided that they shall be operated as required in Section 4-448 of this Ordinance.
8. Family Child Care Home.

Source: Ord. 916, Sec. 21 (2012)

4-422-A.2.A. Provisional Permitted Uses: Any provisional permitted use allowed in the "R-1A" District, subject to the same provisions.

Source: Ord. 916, Sec. 62 (2012)

4-422-A.3. Conditionally Permitted Uses: The following uses may be permitted in the R-1B District subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City Commission as required by Section 4-550 of this Ordinance.

1. Child Care Centers licensed by the State Department of Human Services not within homes, but intended for repurposed schools and churches or redevelopment.
2. Private Non-Commercial recreational or cultural facilities; subject to the following conditions:

- a. The proposed site for any of the uses permitted herein which would attract persons from, or are intended to serve, areas beyond the immediate neighborhood shall have at least one property line abutting a major thoroughfare, either existing or proposed, and the site shall be so planned so as to provide all ingress and egress directly onto or from said major thoroughfare.
 - b. Front, side and rear yards shall be at least sixty (60) feet wide, and shall be landscaped in trees, shrubs, and grass. All such landscaping shall be maintained in a health condition. There shall be no parking or structures permitted in these yards, except required entrance drives and those walls used to obscure the use from abutting residential districts.
3. Retirement, Assisted Living, Basic Care, Nursing, or Convalescent Homes: Not to exceed a height of two (2) stories, when the following conditions are met:
 - a. The site shall be so developed as to create a land-to-building ratio on the lot or parcel whereby for each one (1) bed in the convalescent home there shall be provided not less than fifteen hundred (1,500) square feet of open space. The 1,500 square feet of land area per bed shall provide for landscaped setting, off-street parking, service drives, loading space, yard requirements and space required for accessory uses. The 1,500 square feet requirement is over and above the building area.
 - b. No building shall be closer than forty (40) feet from any property line.
 - c. The majority of residents are age fifty-five (55) and older and there is a minimum of one full time equivalent employee per every six residents.
 - d. The services of a licensed registered nurse are available to all residents.
 - e. The applicant provides the city planner with a detailed plan showing the activities and personnel that will be available to residents of the facility.
4. Townhouse or condominium structures containing three or four units, subject to the following conditions:
 - a. The site for the building shall have at least one property line adjoining, either directly or across

an alley or street, an R-2, R-3 or Commercial District.

- b. The building shall conform to the yard requirements set forth for multiple units in Section 4-424.4 of this ordinance, except for lot area, which shall be a minimum of 9,000 square feet for three-unit buildings and 11,000 square feet for four-unit buildings. Three or four unit townhouses may be permitted in conformance with the yard requirements set for townhouses in Section 4-424.4 of this ordinance.

Source: Ord. 1049, Sec. 10 (2015)

4.422-A.4. Yard Requirements for the R-1B District.

	<u>One-Family</u>	<u>Accessory Buildings</u>	<u>Other Buildings</u>
a. Lot Area Minimum (ft ²)	6,000		
b. Lot Width Minimum (ft)	60		
c. Lot Depth Minimum (ft)	100		
d. Front Yard Minimum (ft)	20 ⁽¹⁾	N/A	25
e. Rear Yard Minimum (ft)	25	3	30
f. Side Yard Minimum (ft)	5 ⁽¹⁾	3 ⁽²⁾	10
g. Maximum Lot Coverage ⁽³⁾	35%		
h. Maximum Height (ft)	30	15	⁽⁴⁾
i. Minimum Green Area ⁽⁵⁾	30%		30%

⁽¹⁾ Garages shall be setback a minimum of 25 feet from the front property line. Garages are limited to 50% of the front building width

⁽²⁾ On corner lots, a side yard facing a public way shall be a minimum of 12 feet, except when a driveway to a garage is located in said side yard, in which case, the side yard shall be a minimum of 20 feet.

⁽³⁾ For any main building and all accessory buildings. Impervious surface areas shall be limited to a maximum of 70%.

⁽⁴⁾ For any building over 35 feet in height, required yards shall be increased by one (1) feet for every two (2) feet of building height over the limit.

- (5) Green area coverage shall apply to the front yard independently and to the entire parcel in aggregate.

Source: Ord. 916, Sec. 22 (2012)

4.422-A.5. Other Applicable Regulations:

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-423. "R-1" DISTRICT OR ONE AND TWO-FAMILY DWELLING DISTRICT.

4-423.1. Statement of Intent. The provisions of the R-1 District are intended to apply to neighborhoods of low to medium density, wherein certain educational, religious, recreational and other activities compatible with residential development are permitted.

4-423.2. Permitted Uses.

1. Any use permitted in the R-1A District.
2. Two-family dwellings, including condominiums and two-unit townhouses.
3. State-licensed group homes serving eight or fewer developmentally disabled persons.

4-423.2.A. Provisional Permitted Uses. Any provisional permitted use allowed in the "R-1A" District, subject to the same provisions.

Source: Ord. 783, Sec. 12 (2006); Ord. 916, Sec. 23 (2012).

4-423.3. Conditionally Permitted Uses. The following uses may be permitted in the R-1 District subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City Commission as required by Section 4-550 of this Ordinance:

1. Any conditional use permitted in the R-1A District.
2. Mortuary or Funeral Home, subject to the following conditions:
 - a. The minimum lot area shall be twenty-five thousand (25,000) square feet and so arranged that adequate assembly area is provided off-street for vehicles to be used in a funeral procession. This assembly area shall be provided in addition to any required off-street parking area.
 - b. The site shall be so located as to have at least one (1) property line abutting a major thoroughfare, either existing or proposed, and all ingress and egress for the site shall be directly onto said major thoroughfare, or a marginal access service drive thereof.
 - c. Points of ingress and egress for the site shall be so laid out as to minimize possible conflicts

between traffic on adjacent major thoroughfares and funeral processions or visitors entering or leaving the site.

- d. No building shall be closer than fifty (50) feet to the property line.
 - e. Loading and unloading areas used by ambulances, hearses or other such service vehicles shall be obscured from all residential view with a wall six (6) feet in height.
3. Medical and/or Dental Clinics, subject to the following conditions:
- a. No such establishment shall be permitted closer than 1,000 feet to the boundary of any district where medical or dental clinics are allowed by right, nor shall any clinic be located within 1,000 feet of any active clinic supplying the same needs for the general area involved. Measurement of distance indicated shall be along usual routes of pedestrian travel.
 - b. The site shall be so located as to have at least one (1) property line abutting a major thoroughfare, either existing or proposed, and all ingress and egress for the site shall be directly onto said major thoroughfare, or a marginal access.
4. Multiple dwelling structures containing three or four units, subject to the following conditions:
- a. The site for the building shall have at least one property line adjoining, either directly or across an alley, an R-2, R-3, or Commercial District.
 - b. The building shall conform to the yard requirements set forth for multiple units in Section 4-424.4 of this Ordinance, except for lot area, which shall be a minimum of 9,000 ft² for three unit buildings and 11,000 ft² for four unit buildings. Three or four unit townhomes may be permitted in conformance with the yard requirements set forth for townhouses in Section 4-424.4 of this Ordinance.

4-423.4. Yard Requirements for the R-1 District.

	<u>One- Family</u>	<u>Two- Family</u>	<u>Twin Home/ Townhomes</u>	<u>Accessory Buildings</u>	<u>Other Buildings</u>
a. Lot Area Minimum (ft ²)	5,000	7,000	3,500		
b. Lot Width Minimum (ft)	50	70	35		
c. Lot Depth Minimum (ft)	100	100	100		
d. Front Yard Minimum (ft)	25	25	25	25	25
e. Rear Yard Minimum (ft)	30	30	30	3	30
f. Side Yard Minimum (ft)	5 ⁽¹⁾	7 ⁽¹⁾	7 ⁽¹⁾	3 ⁽¹⁾	10
g. Maximum Lot Coverage ⁽²⁾	30%	30%	30%		
h. Maximum Height (ft)	30	30	30	15	⁽³⁾
i. Minimum Green Area ⁽⁴⁾	30%	30%	30%		30%

⁽¹⁾ On corner lots, a side yard facing a public way shall be a minimum of 12 feet, except when the driveway to a garage is located in said side yard, in which case the side yard shall be a minimum of 20 feet, except for lots of 50 feet or less, in which case the minimum setback for the garage shall be 18 feet. In this case, the house may be 12 feet, but garage must be a minimum of 20 feet on lots greater in width than 50 feet, or 18 feet on lots 50 feet or less in width.

⁽²⁾ For main building and all accessory buildings. Impervious surface areas shall be limited to a maximum of 70%.

⁽³⁾ For any building over 35 feet in height, required yards shall be increased by one (1) foot for every two (2) feet of building height over the limit.

⁽⁴⁾ Green area coverage shall apply to the front yard independently and to the entire parcel in aggregate.

Source: Ord. 435, Sec. 3 (1992); Ord. 916, Sec. 24 (2012), Ord. 1049, Sec. 12, (2015).

4.423.5. Other Applicable Regulations.

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-423-A. "R-1S" DISTRICT OR SPECIAL ONE AND TWO-FAMILY DWELLING DISTRICT.

4-423-A.1. Statement of Intent. The provisions of the R-1S District are intended to apply to neighborhoods of medium density, which promote the use of smaller lots to lower subdivision costs, use of alleys for accessing garages to create more curb appeal for structures, and reduced front yards to develop more neighbor-friendly developments, and wherein certain educational, religious, recreational and other activities compatible with residential development are permitted. Developers are encouraged to plat varied lot sizes to provide for more opportunity, in housing unit design.

4-423-A.2. Permitted Uses.

1. Any use permitted in the R-1 District.
2. Two-family dwellings, including condominiums and two-unit townhouses.
3. State-licensed group homes serving eight or fewer developmentally disabled persons.

4-423-A.2.A. Provisional Permitted Uses: Any provisional permitted use allowed in the "R-1" District, subject to the same provisions.

Source: Ord. 916, Sec. 63 (2012)

4-423-A.3. Conditionally Permitted Uses. The following uses may be permitted in the R-1S District subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City Commission as required by Section 4-550 of this Ordinance:

1. Any conditional use permitted in the R-1 District.
2. Mortuary or Funeral Home, subject to the following conditions:
 - a. The minimum lot area shall be twenty-five thousand (25,000) square feet and so arranged that adequate assembly area is provided off-street for vehicles to be used in a funeral procession. This assembly area shall be provided in addition to any required off-street parking area.
 - b. The site shall be so located as to have at least one (1) property line abutting, a major thoroughfare, either existing or proposed, and all ingress and egress for the site shall be directly onto said major thoroughfare, or a marginal access service drive thereof.

- c. Points of ingress and egress for the site shall be so laid out as to minimize possible conflicts between traffic on adjacent major thoroughfares and funeral processions or visitors entering or leaving the site.
 - d. No building shall be closer than fifty (50) feet to the property line.
 - e. Loading and unloading areas used by ambulances, hearses or other such service vehicles shall be obscured from all residential view with a wall six (6) feet in height.
3. Medical and/or Dental Clinics, subject to the following conditions:
- a. No such establishment shall be permitted closer than 1,000 feet to the boundary of any district where medical or dental clinics are allowed by right, nor shall any clinic be located within 1,000 feet of any active clinic supplying the same needs for the general area involved. Measurement of distance indicated shall be along usual routes of pedestrian travel.
 - b. The site shall be so located as to have at least one (1) property line abutting a major thoroughfare, either existing or proposed, and all ingress and egress for the site shall be directly onto said major thoroughfare, or a marginal access.
4. Multiple dwelling structures containing three or four units, subject to the following conditions:
- a. The site for the building shall have at least one property line adjoining, either directly or across an alley, an R-2, R-3, or Commercial District.
 - b. The building shall conform to the yard requirements set forth for multiple units in Section 4-424.4 of this Ordinance, except for lot area, which shall be a minimum of 9,000 ft² for three unit buildings and 11,000 ft² for four unit buildings. Three or four unit townhomes may be permitted in conformance with the yard requirements set forth for townhouses in Section 4-424.4 of this Ordinance.

4-423-A.4. Yard Requirements for the R-1S District.

		<u>One- Family</u>	<u>Two- Family</u>	<u>Twin Home/ Townhomes</u>	<u>Accessory Buildings</u>	<u>Other Buildings</u>
a.	Lot Area Minimum (ft ²)	4,000	6,000	3,000		
b.	Lot Width Minimum (ft)	40	60	30		
c.	Lot Depth Minimum (ft)	100	100	100		
d.	Front Yard Minimum (ft) ⁽¹⁾	15	15	15	N/A	15
e.	Rear Yard Minimum (ft)	20	20	20	20	20
f.	Side Yard Minimum (ft)	5 ⁽²⁾	6 ⁽²⁾	6 ⁽²⁾	3 ^{(2) (3)}	10
g.	Maximum Lot Coverage ⁽⁴⁾	45%	45%	45%		
h.	Maximum Height (ft)	30	30	30	15	⁽⁵⁾
i.	Minimum Green Area ⁽⁶⁾	30%	30%	30%		30%

⁽¹⁾ Uncovered porches, uncovered steps to building entrances, uncovered patio decks and uncovered balconies may extend up to five (5) feet into any front yard

⁽²⁾ On corner lots, a side yard facing a public way shall be a minimum of 12 feet.

⁽³⁾ All garages (attached or detached) shall be located in rear yards and driveway access shall be from alleys.

⁽⁴⁾ For main building and all accessory buildings.

⁽⁵⁾ For any building over 35 feet in height, required yards shall be increased by one (1) foot for every two (2) feet of building height over the limit.

⁽⁶⁾ Green area coverage shall apply to the front yard independently and to the entire parcel in aggregate.

Source: Ord. 916, Sec. 25 (2012); Ord. 1094, Sec. 13 (2015)

4-423-A.5. Other Applicable Regulations.

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-423-B. "R-1SM" DISTRICT OR MIXED ONE AND TWO-FAMILY DWELLING DISTRICT. (Source: Ord. 866, Sec. 1 [2010])

4-423-B.1. Statement of Intent. The provisions of the R-1SM District are intended to apply to compact medium density neighborhoods which promote single family ownership to modest-sized lots to reduce the initial and long term costs of land and infrastructure, wherein certain educational, religious, recreational and other activities compatible with residential development are permitted. The District is intended to provide a mix in lot sizes to encourage a mix in starter homes with medium-priced homes along the same street. The variety of housing types and character found in mixed-income neighborhoods will add to the neighborhood's appeal.

4-423-B.2. Permitted Uses.

1. Any use permitted in the R-1S District.
2. Two-family dwellings, including condominiums and two-unit townhouses.
3. State-licensed group homes serving eight or fewer developmentally disabled persons.

4-423-B.2.A. Provisional Permitted Uses: Any provisional permitted use allowed in the "R-1S" District, subject to the same provisions.

Source: Ord. 916, Sec. 64 (2012)

4-423-B.3. Conditionally Permitted Uses. The following uses may be permitted in the R-1SM District subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City Commission as required by Section 4-550 of this Ordinance:

1. Any conditional use permitted in the R-1S District.

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4-423-B.4. Yard Requirements for the R-1SM District.

		<u>One- Family</u>	<u>Two- Family</u>	<u>Twin Home/ Townhomes</u>	<u>Accessory Buildings</u>	<u>Other Buildings</u>
a.	Lot Area Minimum (ft ²)	3,600	6,000	3,000		
b.	Lot Width Minimum (ft)	36	60	30		
c.	Lot Depth Minimum (ft)	100	100	100		
d.	Front Yard Minimum (ft) ⁽¹⁾	20	20	20	N/A	20
e.	Rear Yard Minimum (ft)	20	20	20	3	20
f.	Side Yard Minimum (ft)	4 ⁽²⁾	5 ⁽²⁾	5 ⁽²⁾	3 ^{(2) (3)}	10
g.	Maximum Lot Coverage ⁽⁴⁾	45%	45%	45%		
h.	Impervious Surface Area ⁽⁵⁾	70%	70%	70%		70%
i.	Maximum Height (ft)	35	35	35	15	⁽⁶⁾
j.	Minimum Green Area ⁽⁷⁾	30%	30%	30%		30%

⁽¹⁾ Lots shall be designed at the time of platting such that the lot widths vary between 36-60 feet within the subdivision. Lots on each block shall vary in width with no more than 30 percent of the lots and with no more than two lots side by side between the widths of 36-40 feet. At least 20 percent of the lots on each block shall be between 50-60 feet in width. Corner lots shall be a minimum of 40 feet in width with garage oriented to the interior side so that a minimum of 20 feet of distance can be achieved between the driveway and the property line nearest to the intersection. uncovered porches, uncovered steps to building entrances, uncovered patio decks and uncovered balconies may extend up to five (5) feet into any front yard

⁽²⁾ Uncovered porches, uncovered steps to building entrances, uncovered patio decks and uncovered balconies may extend up to five (5) feet into any front yard.

⁽³⁾ On corner lots, a side yard facing a public way shall be a minimum of 12 feet.

⁽⁴⁾ For main building and all accessory buildings.

- (5) Impervious surface areas apply to front yards independently and to the entire lot in aggregate.
- (6) For any building over 35 feet in height, required yards shall be increased by one (1) feet for every two (2) feet of building height over the limit.
- (7) Green area coverage shall apply to the front yard independently and to the entire parcel in aggregate.

Source: Ord. 916, Sec. 26 (2012); Ord. 1049, Sec. 14 (2015)

4-423-B.5. Other Applicable Regulations.

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-424. "R-2" DISTRICT OR LIMITED MULTIPLE DWELLING DISTRICT.

4-424.1. Statement of Intent. The provisions of the R-2 District are intended to apply to neighborhoods of medium density wherein a variety of housing types and certain educational, religious, recreational and other activities compatible with residential development are permitted.

4-424.2. Permitted Uses.

1. Any use permitted in the R-1SM District.
2. Multiple dwellings containing no more than 8 units, including townhouse structures and condominiums.

Source: Ord. 916, Sec. 27 (2012).

4-424.2.A. Provisional Permitted Uses. Any provisional permitted use allowed in the "R-1SM" District subject to the same provisions.

Source: Ord. 783, Sec. 13 (2006); Ord. 916, Sec. 28 (2012)

4-424.3. Conditionally Permitted Uses. The following uses may be permitted in the R-2 District subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City Commission as required by Section 4-550 of this Ordinance:

1. Any conditional use permitted in the R-1 District.
2. Offices for architects, engineers, attorneys, real estate sales persons or similar professional persons, subject to the following:
 - a. The office shall only be established in a building which was in existence at the time of the effective date of this Ordinance.
 - b. There shall not be more than one business per structure.
3. Medical Hospitals, subject to the following conditions:
 - a. All such hospitals shall be developed only on sites consisting of at least ten (10) acres in area.
 - b. The proposed site shall have at least one property line abutting a major thoroughfare, existing or proposed. All ingress and egress to the off-street parking area, for guests, employees, staff, as well as any other uses of the facilities, shall be directly from a major thoroughfare.
 - c. The minimum distance of any main or accessory building from bounding lot lines or streets shall be at least one hundred (100) feet for front, rear and side yards for all two (2) story structures. For every story above two (2), the minimum yard

distance shall be increased by at least twenty (20) feet.

- d. Ambulance and delivery areas shall be obscured from all residential view with a wall six (6) feet in height.
4. Multiple dwelling structures containing from nine to twelve units, subject to the following:
 - a. The building shall conform to the yard requirements set forth in Section 4-424.4 of this Ordinance.
 - b. The site for the building shall have at least one property line which adjoins, either directly or across an alley, a commercial or an R-3 District.
5. State-licensed group homes serving at least eight but no more than twelve developmentally disabled persons.
6. Social Service uses such as drug treatment shelter, homeless shelters and shelters for victims of domestic abuse in structures with up to twelve (12) rooms or units.

Source: Ord. 703, Sec. 1 (2004); Ord. 916, Sec. 29 (2012).

4-424.4. Yard Requirements for the R-2 District.

	<u>One-Family</u>	<u>Two-Family (Duplex or Twin Home) on Lots Created Prior to 1970</u>	<u>Two-Family (Duplex or Twin Home) on Lots Created in 1970 or Thereafter</u>	<u>Townhomes (3 or More Units)</u>
a. Lot Area Minimum (ft ²)	5,000	6,000 ⁽⁶⁾	6,000 ⁽⁶⁾	3,000
b. Lot Width Minimum (ft)	50	50 ⁽⁷⁾	60 ⁽⁸⁾	24
c. Lot Depth Minimum (ft)	100	100	100	100
d. Front Yard Minimum (ft)	25	25	25	25
e. Rear Yard Minimum (ft)	30	30	30	30
f. Side Yard Minimum (ft)	5 ⁽²⁾	6 ⁽²⁾	6 ⁽²⁾	8 end ⁽²⁾ 0 int
g. Maximum Lot Coverage ⁽⁴⁾	30%	40%	35%	40%
h. Maximum Height (ft)	30	30	30	35 ⁽⁵⁾
i. Minimum Green Area ⁽⁹⁾	30%	30%	30%	25%

	<u>Multiple Dwellings</u>	<u>Accessory Buildings</u>	<u>Other Bldgs</u>
a. Lot Area Minimum (ft ²)	(1)		
b. Lot Width Minimum (ft)			
c. Lot Depth Minimum (ft)			
d. Front Yard Minimum (ft)	25	25	25
e. Rear Yard Minimum (ft)	30	3	30
f. Side Yard Minimum (ft)	(3) (2)	3 (2)	10
g. Maximum Lot Coverage (4)	40%		
h. Maximum Height (ft)	35 (5)	15	(5)
i. Minimum Green Area (9)	25%		30%

(1) 1,800 ft² for each dwelling unit plus 200 ft² for each bedroom, with a minimum permitted lot area of 8,000 ft². Efficiency units shall be considered one-bedroom units for the purpose of lot computation.

(2) On corner lots, a side yard facing a public way shall be a minimum of 12 feet, except when the driveway to a garage is located in said side yard, in which case the side yard shall be a minimum of 20 feet, except for lots of 50 feet or less, in which case the minimum for the garage shall be 18 feet. In this case, the house may be 12 feet, but garage must be a minimum of 20 feet on lots greater in width than 50 feet, or 18 feet on lots 50 feet or less in width.

(3) 12% of the lot width, with a maximum of 12 feet, except that when multiple family structures with multiple floors are located adjacent to one and two-family properties, the minimum setback from the one and two-family property for the principal structure shall be increased by 20 feet for each additional floor above the ground floor.

(4) For main building and all accessory buildings. Impervious surface areas shall be limited to a maximum of 75%.

(5) For every building over 35 feet in height, required yards shall be increased by one (1) foot for every two (2) feet of building height over the limit.

(6) A duplex which consists of 2 units on one lot is required to have a minimum lot area of 6,000 square feet. A twin home which consists of 2 units side by side with a common party wall is required to have a minimum lot area of 3,000 square feet for each unit.

(7) A duplex is required to have a minimum lot width of 50 feet, whereas a twin home is required to have a minimum lot width of 25 feet for each unit.

- (8) A duplex is required to have a minimum lot width of 60 feet, whereas a twin home is required to have a minimum lot width of 30 feet for each unit.
- (9) Green area coverage shall apply to the front yard independently and to the entire parcel in aggregate.

Source: Ord. 435, Sec. 4 (1992); Ord. 501, Sec. 5 (1996); Ord. 916, Sec. 30 (2012).

4-424.5. Other Applicable Regulations:

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-425. "R-3" DISTRICT OR MULTIPLE DWELLING DISTRICT.

4-425.1. Statement of Intent. The provisions of the R-3 District are intended to apply to neighborhoods of medium to high density wherein a variety of housing types and certain educational, religious, recreational, and other activities compatible with residential development are permitted.

4-425.2. Permitted Uses.

1. Any use permitted in the R-2 District.
2. Multiple dwellings containing more than 8 units, including condominiums and townhouses.
3. Social Service uses such as drug treatment shelters, homeless shelters and shelters for victims of domestic abuse.

Source: Ord. 916, Sec. 31 (2012).

4-425.2.A. Provisional Permitted Uses. Any provisional permitted use allowed in the "R-2" District subject to the same provisions.

Source: Ord. 783, Sec. 14 (2006); Ord. 916, Sec. 32 (2012)

4-425.3. Conditionally Permitted Uses. The following uses may be permitted in the R-3 District subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City Commission as required by Section 4-550 of this Ordinance:

1. Any conditional use permitted in the R-2 District.
2. Convenience Establishments, as defined by this Ordinance, and subject to the following conditions:
 - a. No such establishment shall be permitted closer than 1,000 feet to the boundary of any district where similar facilities are generally permitted, nor shall any new establishment of a specific kind be located within 1,000 feet of an active establishment of the same nature found suitable for supplying the same needs for the general area involved. Measurement of distances indicated shall be along usual routes of pedestrian travel.
 - b. Strong preference shall be given to location of complementary additions in the immediate vicinity of existing convenience establishments of other types in patterns which facilitate easy pedestrian circulation from the surrounding area and from one establishment to another, and to arrangements which encourage joint use of parking areas and automotive entrances and exits.

- c. In the environment in which convenience establishments are intended to be permitted, it is the intent of this Ordinance that no such establishment or group of establishments shall be of such size or character as to create the impression of general commercial development. Therefore, in addition to other limitations designed to achieve these ends, no individual retail convenience establishment shall have a gross floor area exceeding 5,000 square feet.
- d. A front yard 20 feet in depth shall be provided, and where the lot adjoins a street on more than one side, a yard 20 feet in depth shall be provided adjacent to all streets. Side yards shall be 10 feet in width adjacent to residential lots, but where the side of the lot is adjacent to a lot on which another convenience establishment is located, or is being constructed, or is definitely to be constructed, no side yard need be provided if the structures involved are to have a common or party wall, or are to have no space between their walls. If there is to be space between the walls of adjacent structures housing convenience establishments or their accessory uses, such space shall be at least five feet in width. Rear yards shall be 25 feet in depth.

4-425.4. Yard Requirements for the R-3 District.

	<u>One-Family</u>	<u>Two-Family (Duplex or Twin Home) on Lots Created Prior to 1970</u>	<u>Two-Family (Duplex or Twin Home) on Lots Created in 1970 or Thereafter</u>	<u>Townhomes (3 or More Units)</u>
a. Lot Area Minimum (ft ²)	5,000	6,000 ⁽⁶⁾	6,000 ⁽⁶⁾	3,000
b. Lot Width Minimum (ft)	50	50 ⁽⁷⁾	60 ⁽⁸⁾	24
c. Lot Depth Minimum (ft)	100	100	100	100
d. Front Yard Minimum (ft)	25	25	25	25
e. Rear Yard Minimum (ft)	30	30	30	30
f. Side Yard Minimum (ft)	5 ⁽²⁾	6 ⁽²⁾	6 ⁽²⁾	8 end ⁽²⁾ 0 int
g. Maximum Lot Coverage ⁽⁴⁾	30%	40%	35%	40%
h. Maximum Height (ft)	30	30	30	35 ⁽⁵⁾
i. Minimum Green Area ⁽⁹⁾	30%	30%	30%	25%

	<u>Multiple Dwellings</u>	<u>Accessory Buildings</u>	<u>Other Bldgs</u>
a. Lot Area Minimum (ft ²)	(1)		
b. Lot Width Minimum (ft)			
c. Lot Depth Minimum (ft)			
d. Front Yard Minimum (ft)	25	25	25
e. Rear Yard Minimum (ft)	25	3	30
f. Side Yard Minimum (ft)	(3) (2)	3 (2)	10
g. Maximum Lot Coverage (4)	40%		
h. Maximum Height (ft)	35 (5)	15	(5)
i. Minimum Green Area (9)	25%		25%

(1) 1,600 ft² for each dwelling unit plus 200 ft² for each bedroom, with a minimum permitted lot area of 8,000 ft². Efficiency units shall be considered one-bedroom units for the purpose of lot computation.

(2) On corner lots, a side yard facing a public way shall be a minimum of 12 feet, except when the driveway to a garage is located in said side yard, in which case the side yard shall be a minimum of 20 feet, except for lots of 50 feet or less, in which case the minimum setback for the garage shall be 18 feet. In this case, the house may be 12 feet, but garage must be a minimum of 20 feet on lots greater in width than 50 feet, or 18 feet on lots 50 feet or less in width.

(3) 12% of the lot width, with a maximum of 12 feet, except that when multiple family structures with multiple floors are located adjacent to one and two-family properties, the minimum setback from the one and two-family property for the principal structure shall be increased by 20 feet for each additional floor above the ground floor.

(4) For main building and all accessory buildings. Impervious surface areas shall be limited to a maximum of 75%.

(5) For every building over 35 feet in height, required yards shall be increased by one (1) foot for every two (2) feet of building height over the limit.

(6) A duplex which consists of 2 units on one lot is required to have a minimum lot area of 6,000 square feet. A twin home which consists of 2 units side by side with a common party wall is required to have a minimum lot area of 3,000 square feet for each unit.

- (7) A duplex is required to have a minimum lot width of 50 feet, whereas a twin home is required to have a minimum lot width of 25 feet for each unit.
- (8) A duplex is required to have a minimum lot width of 60 feet, whereas a twin home is required to have a minimum lot width of 30 feet for each unit.
- (9) Green area coverage shall apply to the front yard independently and to the entire parcel in aggregate.

Source: Ord. 435, Sec. 5 (1992); Ord. 501, Sec. 6 (1996); Ord. 916, Sec. 33 (2012)

4-425.5. Other Applicable Regulations.

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-426. "R-4" DISTRICT OR MOBILE HOME DISTRICT.

4-426.1. Statement of Intent. It is the purpose of the R-4 District to establish areas within the City of West Fargo for mobile homes in mobile home parks not subdivided into individual lots, in an appropriate, safe, sanitary, and attractive environment.

4-426.2. Permitted Uses.

1. Mobile homes with a minimum floor area, excluding attached garage, of 650 square feet.
2. Parks and playgrounds.
3. Management offices, repair shops, and storage areas; sanitary facilities; indoor recreation areas; and convenience establishments subject to the following restrictions: Such establishments, together with their parking areas, shall not occupy more than ten (10) percent of the area of the park, shall be located, designed and intended to serve frequent trade or service needs only of persons residing in the park, and shall present no visible evidence of their commercial character to any portion of any residential district outside the park.
4. Essential services.
5. Entryways not to exceed 8 feet by 10 feet (8'x 10').
6. Accessory storage sheds and garages.

Source: Ord. 501, Sec. 7 (1996); Ord 527, Sec. 2 (1997).

4-426.3. Applicable Regulations. See Title XVI of the Ordinances of the City of West Fargo, North Dakota, for regulations concerning the establishment, operation, and maintenance of mobile home parks.

4-426.4. Dimensional Requirements. See Title XVI of the Ordinances of the City of West Fargo, North Dakota.

4-426.5. Other Applicable Regulations.

- A. Section 4-440 Supplementary District Regulations
- B. Section 4-450 Off-Street Parking and Loading Requirements
- C. Section 4-460 Sign Regulations
- D. Accessory storage sheds and garages greater in size than 8' x 10' shall be required to obtain a building permit.

Source: Ord. 527, Sec. 3 (1997)

4-426-A. R-5: MOBILE HOME (MANUFACTURED HOME) SUBDIVISION DISTRICT.

1. Statement of Intent. This district is intended primarily for manufactured home subdivisions allowing manufactured homes as single-family dwellings. Lots and manufactured homes would be in common ownership as in other residential districts.

It is intended that such manufactured home developments shall be so located, designed, and improved as to provide a desirable residential environment, protection from potentially adverse neighboring influences, protection for adjacent residential properties, access for vehicular traffic without traversing minor streets in adjoining residential neighborhoods, and accessibility equivalent to that for other forms of permitted residential development to public facilities, places of employment, and facilities for meeting commercial and service needs.

Certain structures and uses required to serve governmental, educational, religious, recreational, and other needs of residential areas are allowed in this district as permitted or conditional uses subject to restrictions intended to preserve and protect the residential character of the district.

Source: Ord. 527, Sec. 4 (1997)

2. Permitted Uses and Structures. The following shall be permitted:
 - A. Family child care home.
 - B. Single-family detached dwellings, including manufactured homes.
 - C. Publicly owned and operated parks, playgrounds, and recreational facilities.
 - D. Schools, churches, religious institutions and places of worship.
 - E. Essential services and public buildings.
 - F. State-licensed group homes serving six or fewer developmentally disabled persons.
 - G. Accessory buildings, provided that they shall be located as required in Section 4-422 of this ordinance.
 - H. Home occupations, provided that they shall be operated as required in Section 4-448 of this ordinance.

Source: Ord. 527, Sec. 4 (1997); Ord. 783, Sec. 6 (2006); Ord. 916, Sec. 34 (2012)

2-A. Provisional Permitted Uses. The following uses may be permitted in the R-5 district subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City Planning Office:

1. Child care home facilities in single family homes with up to twelve (12) children, excluding the children of the child care provider, subject to the following provisions:
 - a. The use of the dwelling unit for the child care facility shall be clearly incidental and subordinate to its use for residential purposes by its occupants.
 - b. The rear yard shall be fenced with a solid fence. In the event that an existing fence is in place which is not a solid fence, the Planning Office may allow the existing fence to continue until such time that there is a complaint from an adjoining property owner. Upon receiving a complaint, the fence shall be changed to a solid fence.
 - c. The children shall be dropped off and picked up in the driveway only.
 - d. Adequate off-street parking shall be provided for the principal use, and child care facility including space(s) for dropping off children and employees.
 - e. The hours of operation are limited to 6:00 a.m. to 10:00 p.m.

Source: Ord. 783, Sec. 15 (2006); Ord. 1049, Sec. 15 (2015)

3. Conditionally Permitted Uses. The following uses may be permitted in the R-5 District, subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City Commission as required by Section 4-550 of this ordinance.

A. Private non-commercial recreational or cultural facilities; subject to the following conditions:

- (1) The proposed site for any of the uses permitted herein which would attract persons from, or are intended to serve, areas beyond the immediate neighborhood shall have at least one property line abutting a major thoroughfare, either existing or proposed, and the site shall be so planned so as to provide all ingress and egress directly onto or from said major thoroughfare.
- (2) Front, side and rear yards shall be at least sixty (60) feet wide, and shall be landscaped in trees, shrubs, and grass. All such landscaping shall be maintained in a healthy

condition. There shall be no parking or structures permitted in these yards, except required entrance drives and those walls used to obscure the use from abutting residential districts.

B. Retirement, Assisted Living, Basic Care, nursing or convalescent homes: Not to exceed a height of two (2) stories, when the following conditions are met:

- (1) The site shall be so developed as to create a land-to-building ratio on the lot or parcel whereby for each one (1) bed in the convalescent home there shall be provided not less than fifteen hundred (1,500) square feet of open space. The 1,500 square feet of land area per bed shall provide for landscaped setting, off-street parking, service drives, loading space, yard requirements and space required for accessory uses. The 1,500 square feet requirement is over and above the building area.
- (2) No building shall be closer than forty (40) feet from any property line.
- (3) The majority of residents are age fifty-five (55) and older and there is a minimum of one full time equivalent employee per every six residents.
- (4) The services of a licensed registered nurse are available to all residents.
- (5) The applicant provides the city planner with a detailed plan showing the activities and personnel that will be available to residents of the facility.

Source: Ord. 1049, Sec. 16 (2015)

4. Yard Requirements for the R-5 District:

	<u>One Family</u>	<u>Accessory Buildings</u>	<u>Other Buildings</u>
A. Lot area minimum (ft ²)	6,000		
B. Lot width minimum (ft)	60		
C. Lot depth minimum (ft)	130		
D. Front yard minimum (ft)	25	25	25
E. Rear yard minimum (ft)	10	3	10
F. Side yard minimum (ft)	7.5(1)	7.5(1)	10

- G. Maximum lot coverage (2) 30%
- H. Maximum height (ft) 30 15 (3)
- (1) On corner lots, a side yard facing a public way shall be a minimum of 12 feet, except when a driveway to a garage is located in said side yard, in which case, the side yard shall be a minimum of 20 feet.
- (2) For any main building and all accessory buildings.
- (3) For any building over 35 feet in height, required yards shall be increased by one (1) foot for every two (2) feet of building height over the limit.

5. Other Applicable Regulations:

- A. All manufactured homes must meet at minimum the Manufactured Home Construction and Safety Standards Act provisions as adopted by the Department of Housing and Urban Development (HUD) in 1974 (24 CFR 3280) which became effective June 15, 1976, and bear a date plate certifying that it was built in compliance with said Act.
- B. No manufactured home may be built, constructed, or otherwise assembled or placed without the owner thereof having obtained a building permit from the office of the building administrator for which a fee shall be calculated in the same manner for which other fees are calculated within the City of West Fargo.
- C. Foundation and Skirting Requirements - All manufactured homes shall be placed on permanent foundations which are protected from frost and meet HUD, FHA, and manufacturer's foundation specifications, or other foundations which are approved by the Building Administrator. Foundation skirting around the perimeter of the manufactured home shall consist of material made from concrete or masonry products, or an approved material by the Building Inspector that is consistent in appearance and quality with products used in the area and which color and texture will be consistent with surrounding structures.

Source: Ord. 530, Sec. 2 (1997).

- D. All manufactured homes shall have a roof with a pitch of not less than a two and one-half inch (2½") vertical rise for each twelve inches (12") of horizontal run and consisting of shingles or other material customarily used for conventional

dwelling and approved by the Building Administrator.

- E. The minimum floor area for a manufactured home in this district shall be 900 square feet.
- F. The requirements as herein stated for this district shall be deemed as the minimum standards. Nothing in these requirements shall be deemed to supersede any valid restrictive covenants of record.
- G. Section 4-440 Supplementary District Regulations
- H. Section 4-450 Off-Street Parking and Loading Regulations
- I. Section 4-460 Sign Regulations

Source: Ord. 527, Sec. 5 (1997).

4-427. "C" DISTRICT OR LIGHT COMMERCIAL DISTRICT.

4-427.1. Statement of Intent: The provisions of the C District are intended to provide areas of commercial establishments to which the public requires direct and frequent access, but which are not characterized either by constant heavy trucking other than stocking and delivery of light retail goods, or by any other nuisance factor other than the incidental noise of the congregation of people and passenger vehicles.

4-427.2. Permitted Uses.

1. Retail businesses, such as general merchandise, food, liquor, hardware, furniture, and apparel stores; eating and drinking establishments; and drugstores.
2. Business services, such as banks, and other financial institutions, and professional offices.
3. Commercial and professional office buildings, single or multi-tenant.
4. Personal services, such as barber and beauty shops, photographic studios, laundromats and dry cleaning establishments.
5. Entertainment, social or recreational businesses, such as bowling alleys, health clubs, theaters (excluding drive-ins), night clubs, private clubs and lodges.
6. Repair services, such as radio shops, appliance shops, upholstery shops and shoe repair shops.
7. Cultural and educational facilities, such as trade schools, museums, business colleges, and adult education centers.
8. Schools, churches, religious institutions and places of worship.
9. Public/semi-public facilities, such as armories, parks, police and fire stations; telephone exchange buildings, and civic centers.
10. Medical and dental facilities such as clinics, hospitals, nursing, basic care or convalescent homes, not including Behavioral Health Care Facility.
11. Veterinary clinics without overnight facilities.
12. Hotels and motels.
13. Public transportation depots.
14. Greenhouses and plant nurseries.

15. Automobile service stations and automobile repair shops, where motor vehicle fuels and minor automotive accessories are sold at retail and/or services for automobiles are performed, but not to include body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, outdoor storage of vehicle parts, or other work involving noise, glare, fumes, smoke, or other nuisance characteristics.
16. Parking lots.
17. On-premise signs.
18. Essential services.
19. Child Care Facility, Child Care Center and Family Child Care Home in an existing residential building or in a non residential building.
20. Social Service uses such as homeless shelters, shelters for victims of domestic abuse, and facilities to feed the homeless and indigent.
21. Other: Uses not listed but similar to the permitted uses above and consistent with the stated purpose of this district.

Source: Ord. 456, Sec. 1 (1993); Ord. 571, Sec. 3 (1999); Ord. 916, Sec. 35 (2012); Ord. 1049, Sec. 17 (2015).

4-427.3. Conditionally Permitted Uses. The following use may be permitted in the C District subject to the conditions hereinafter imposed and subject further to review and approval by the City Commission as required by Section 4-550 of this Ordinance:

1. Apartments above commercial establishments; subject to the following conditions:
 - a. Any apartment shall be provided with off-street parking the same as for multiple dwellings.
 - b. Any apartment shall be provided with private access.
2. Assisted living facilities when the following conditions are met:
 - a. The majority of residents are age fifty-five (55) and older and there is a minimum of one full time equivalent employee per every six residents.
 - b. The services of a licensed registered nurse are available to all residents.
 - c. The applicant provides the city planner with a detailed plan showing the activities and personnel that will be available to residents of the facility.

3. Automobile conversion and sales, sale of trucks, recreational vehicles and motor vehicle equipment, and motor vehicle equipment rental.
4. Multiple dwellings, including condominiums.
5. Above-ground class 1 and class 2 liquid storage tanks. Provided that in addition to the requirements of Section 4-550 that the following requirements are met:
 - a. Maximum size of tank may not exceed 500 gallons.
 - b. The use of the tank is limited to service of vehicles of owner or tenants of property upon which the tank is located.
 - c. Operation of the tank is done only by owner or tenants or their employees.
 - d. Plans for the tank, pump and other dispensing equipment must be approved by the State Fire Marshall and Chief of the West Fargo Volunteer Fire Department prior to conditional use application being considered by the City.
 - e. That the tank complies with all State Fire Code requirements.
 - f. That only one above ground tank may be permitted at any one site.

In granting the conditional use permit, the City may designate the location of the tank or a distance that the tank must be from other properties.

6. Veterinary clinics with indoor overnight boarding facilities.
7. Behavioral Health Care Facility conforming to the following conditions:
 - a. Must be licensed by the City of West Fargo pursuant to Chapter 10-13 of the Revised Ordinances of 1990 of the City of West Fargo.
 - b. Prepare and file with the West Fargo Police Department a public relations plan, contact information for local facility personnel and a full and complete description of all prescription drugs being distributed at the facility.
 - c. The maximum number of patients to be served at the location of the facility shall not exceed fifty 50 persons per day.
 - d. The use shall not be combined with a single family detached, manufacturing, or industrial use.

- e. The proposed location shall have sufficient access to public transportation facilities.

Source: Ord. 858, Sec. 1 (2010); Ord. 1049, Sec. 18 (2015)

4-427.4. Yard Requirements for the C District.

1. Commercial Uses:

Yards: None required except where a lot in the C District abuts a side yard in any residential district, in which case, there shall be provided on the commercial lot, the same side yard as would be required in the residential district.

2. Multiple Residential Uses: Shall conform to the area and yard requirements of the R-3 District. Lot coverage shall not exceed 50% of the lot.

Source: Ord. 456, Sec. 3 (1993).

4-427.5. Other Applicable Regulations.

Section 4-440 Supplementary District Regulations
Section 4-450 Off-Street Parking and Loading Requirements
Section 4-460 Sign Regulations

4-427-A. "C-OP" DISTRICT OR COMMERCIAL OFFICE PARK DISTRICT

Source: Ord. 748, Sec. 13 (2005)

4-427-A.1. STATEMENT OF INTENT. This district is intended to provide for the development of office, office showroom, and office warehouse buildings in an area of high quality site development standards, amenities, and building materials. This district would be particularly well situated in areas of high visibility and include support uses which meet the level of development quality, benefit from the visibility and access to traffic, and create an aesthetically attractive impression on surrounding areas and roadways. It is the intent of this district that building architecture and site development provide the primary means of exposure and communication, and that reliance on signs is minimized. Businesses which require more signage or building construction which is out of character with the district are not appropriate.

4-427-A.2. PERMITTED USES.

1. Commercial and professional office buildings, single or multi tenant.
2. Business services, such as banks, and other financial institutions, and professional offices.
3. Cultural and educational facilities.
4. Churches and Schools.
5. Public/Semi-public facilities.

Source: Ord. 1049, Sec. 19 (2015)

4-427-A.3. CONDITIONALLY PERMITTED USES. The following uses may be permitted in the "C-OP" District subject to the conditions hereinafter imposed and subject further to review and approval by the City as required by Section 4-550 of this ordinance:

1. Office combined with showrooms, in which products are provided for viewing and display to retail or wholesale buyers, provided that in such building, office space comprises of no less than forty percent (40%) of the gross floor space of the building, but not outdoor display.
2. Office combined with warehouse, in which products are stored for use, repackaging, display, and shipping, but not assembly, manufacturing, or fabrication, provided that in such building, office space comprises no less than forty percent (40%) of the gross floor space of the building, but not outdoor storage.
3. Full service restaurants, provided that where such restaurant is integral to another principal building, such as an office or hotel, parking supply is calculated to accommodate the mix of uses.

4. Hotels and motels.
5. Nursing and basic care homes, retirement homes, and convalescent homes.
6. Assisted living facilities when the following conditions are met:
 - a. The majority of residents are age fifty-five (55) and older and there is a minimum of one full time equivalent employee per every six residents.
 - b. The services of a licensed registered nurse are available to all residents.
 - c. The applicant provides the city planner with a detailed plan showing the activities and personnel that will be available to residents of the facility.

Source: Ord. 977, Sec. 1 (2013); Ord. 1049, Sec 20 (2015)

4-427-A.4. SITE DEVELOPMENT STANDARDS. The following standards shall apply to all uses in the C-OP District, in addition to other provisions found elsewhere in this ordinance. Where these regulations conflict with other general provisions, these regulations shall be deemed to apply.

1. Yard Requirements.

- a. Front Yard: 60 feet from front property line.
- b. Side Yard: 10 feet from the side property line.
- c. Rear Yard: 35 feet from rear property line.
- d. Parking: 15 feet from front property line, 5 feet from all other property lines.

2. Building Construction:

- a. A higher construction standard is required in the Commercial Office Park District. Any exposed metal or fiberglass on all buildings shall be limited to no more than thirty (30) percent of any wall which fronts on a public street, provided that it is coordinated into the architectural design. Truck parking or loading shall be screened with materials of the principal building and other screenings, so that such uses are not directly visible from the Interstate or any public street.
 - (1) Additions, Alterations, and Accessory Buildings. All subsequent additions, exterior alterations and accessory buildings, constructed after the erection of an original building or buildings shall be of the same materials as those used in the original

building and shall be designed in a manner conforming to the original architectural concept and general appearance. These provisions shall not prevent the upgrading of the quality of materials used in a remodeling or expansion program.

- (2) Appearance. Garages, accessory structures, screened walls and exposed areas of retaining walls shall be of a similar type, quality and appearance as the principal structure. These provisions shall not prevent the upgrading of the quality of materials used in a remodeling or expansion program.

3. Landscaping Requirements.

- a. On all property within the C-OP District, no less than 25% of the property shall be landscaped with trees, shrubs, grass, and other cultured plantings. The number of trees to be planted shall be no less than the total number of feet of the length of the lot perimeter divided by 50 feet.
- b. Within parking lots, one landscaped island of at least 150 square feet shall be provided for every twenty parking spaces.
- c. Ponds for the management of storm water shall not count toward the minimum landscaped standard.

4. Signage Requirements.

- a. One monument-style sign is permitted for each building. Pylon or pole signs are not permitted, except by conditional use. Such sign, if found not to detract from the intent and character of the C-OP District, may be allowed, provided that it shall be limited to a maximum of one hundred fifty (150) square feet in area and thirty-five (35) feet in height.
- b. In addition to the monument sign, one wall-mounted sign is permitted for each public street frontage of the parcel. No individual sign may exceed eighty (80) square feet in area.
- c. Sign construction and illumination. Signs may be illuminated by external flood lights, or internally. No flashing, blinking, or motion lighting of any kind is permissible.

4-427-A.5. OTHER APPLICABLE REGULATIONS

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-428. "HC" DISTRICT OR HEAVY COMMERCIAL DISTRICT.

(Source: Ord. 1045, Sec. 2 [2015])

4-428.1. Statement of Intent. The provisions of the HC District are intended to provide areas for commercial establishments which rely on frequent access and are somewhat dependent on commercial uses nearby, have limited outdoor storage, require close access to major thoroughfares, accommodate primarily automotive-oriented customers, generate moderate truck traffic, and have characteristics which make the uses generally compatible when located next to uses in the C District or neighboring industrial uses in the LI District.

4-428.2. Permitted Uses. Source: Ord. 1078, Sec. 3 (2017)

1. General commercial uses, such as full-service gas stations, eating and drinking establishments, sales of new and used motor vehicles, motor vehicle rental, sale of construction equipment, farm implements, mobile homes, and recreational vehicles, and sale of lumber and other building materials.
2. Commercial and professional office buildings, single or multi-tenant.
3. Repair and service of automobiles and trucks.
4. Plant nurseries and greenhouses.
5. Veterinary clinics with overnight boarding facilities
6. Hotels and motels.
7. Social Service uses such as homeless shelters, shelters for victims of domestic abuse, and facilities to feed the homeless and indigent.
8. Parking lots.
9. Child Care Facility and Child Care Center.
10. Religious Institutions.
11. Public Buildings and Essential Services.
12. Indoor Personal Training Facilities.
13. Other: Uses not listed but similar to the permitted uses above and consistent with the stated purpose of this district.

4-428.3. Conditionally Permitted Uses.

1. Plumbing and heating shops, sheet metal shops, roofing shops.
2. Wholesale distribution facilities
3. Contract construction services.

4. Mini-storage facilities.
5. General warehousing and storage, not to include auto wrecking, junk or other salvage storage.
6. Light manufacturing, including manufacturing or assembly of small parts, apparel and other finished products from fabrics, leather, etc., wood products, computer products, and printing.
7. Off-premise signs, subject to the following:
 - a. No two off-premise signs may be placed less than 250 feet apart.
 - b. The off-premise sign is not located within a "CO": corridor Overlay District or a "CO-I": Interstate Corridor Overlay District.
8. Above-ground class 1 and class 2 liquid storage tanks under the same conditions set forth in Section 4-427.3(4), except that in regard to class 2 liquids, the maximum size of the tank be changed to 5,000 gallons, and one class 1 and one class 2 above-ground tank may be allowed.
9. Above-ground propane fuel tanks, subject to no more than one 1,200 container capacity (water gallons), as well as placement and screening to ensure both aesthetic and public safety purposes.

4-428.4. Yard Requirements for the HC District. None required except where a lot in the HC District abuts a yard in any residential district, in which case there shall be a side yard the same as would be required in the residential district.

4-428.5. Other Applicable Regulations.

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-428.3. Yard Requirements for the CM District. None required except where a lot in the CM district abuts yard in any residential district, in which case, there shall be a side yard the same as would be required in the residential district.

4-428.4. Other Applicable Regulations.

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-428-A. "LI" DISTRICT OR LIGHT INDUSTRIAL DISTRICT.

(Source: Ord. 1045, Sec. 3 [2015])

4-428-A.1. Statement of Intent. The provisions of the LI District are intended to provide areas for commercial establishments that are relatively independent from adjacent commercial uses for spin-off business, use extensive outdoor storage or warehousing, require close access to major thoroughfares, accommodate automotive and truck-oriented customers, generate truck traffic, or have similar characteristics which make them incompatible uses in the C and HC Districts and more appropriate as neighbors of industrial uses; and to establish, preserve, in a location and manner which benefits the City, industrial and related uses which are relatively free from objectionable influences and therefore are of a nature that they will not adversely affect surrounding areas.

4-428-A.2. Permitted Uses.

1. Light manufacturing and similar-type industrial operations which are consistent with the purposes of this district.
2. Plumbing and heating shops, sheet metal shops, roofing shops.
3. Wholesale distribution facilities.
4. Contract construction services.
5. Recreational uses which, by their nature, require large land areas to buffer them from adjoining uses, such as racetracks, drive-in movie theaters or fairgrounds.
6. Animal kennels and shelters.
7. General warehousing and storage, not to include auto wrecking, junk or other salvage storage.
8. Motor freight or other trucking facilities, truck stops and truck repair services.
9. Off-premise signs.
10. Above-ground class 1 and class 2 liquid storage tanks under the same conditions set forth in Section 4-427.3(4), except that in regard to class 2 liquids, the maximum size of the tank be changed to 5,000 gallons, and one class 1 and one class 2 above-ground tank may be allowed.
11. Above-ground propane fuel tanks, subject to no more than one 2,000 container capacity (water gallons), as well as placement and screening to ensure both aesthetic and public safety purposes.
12. Landscaping services and tree nurseries without stockpiling. Display storage or storage of materials may

occur provided it shall be less than six (6') feet in height, with the exceptions of trees or monuments, and be screened from neighboring properties and public streets.

13. Parking lots.

14. Other: Uses not listed but similar to the permitted uses above and consistent with the stated purpose of this district.

Source: Ord. 1049, Sec. 21 (2015)

4-428-A.3. Conditionally Permitted Uses.

Source: Ord. 1078, Sec. 1 (2017)

1. Grain elevators, seed cleaning, feed mixing and grinding plants.
2. Above-ground class 1 and 2 liquid storage tanks with a maximum tank size of 20,000 gallons and overall capacity of 200,000 gallons; and propane fuel tanks subject to no more than 30,000 container capacity (water gallons), subject to the following:
 - a. A minimum distance of 75 feet is maintained from property lines, as well as placement and screening to ensure both aesthetic and public safety purposes.
 - b. The use is reviewed and approved by the Fire Department for quantities and separation from other lots of record and buildings.
3. Eating and drinking establishments, and commercial and professional office buildings, single or multi-tenant, subject to the following:
 - a. The facilities have adequate separation from uses which may be injurious to health or pose life safety risks.
4. Indoor Personal Training Facilities, provided the facility has adequate separation from uses which may be injurious to health or pose life safety risk.
5. Compassion centers as described further in Section 4-429.8.

Source: Ord. 1102, Sec. 2 (2017)

4-428-A.4. Yard Requirements for the LI District. None required except where a lot in the LI District abuts a yard in any residential district, in which case there shall be a side yard the same as would be required in the residential district.

4-428-A.5. Other Applicable Regulations.

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-429. "M" DISTRICT OR HEAVY INDUSTRIAL DISTRICT.

(Source: Ord. 1045, Sec. 4 [2015])

4-429.1. Statement of Intent. The provisions of the M District are intended to establish and preserve areas for necessary industrial and related uses which due to their size and/or nature of operation, may have a significant impact on the environmental and social well-being of the City and therefore require isolation from many other kinds of land uses.

4-429.2. Permitted Uses.

1. Industrial uses allowed in the LI District as permitted uses.
2. Manufacturing and similar type industrial operations consistent with the purposes of this district.
3. Grain elevators and feed mixing and grinding plants.
4. Accessory uses clearly incidental to the principal use.
5. Off-premise signs.
6. Adult entertainment centers complying with Section 4-429.6 of the Revised Ordinances of the City of West Fargo.
7. Other: Uses not listed but similar to the permitted uses above and consistent with the stated purpose of this district.

Source: Ord. 1049, Sec. 22 (2015)

4-429.3. Conditionally Permitted Uses. The following uses may be permitted to the M District subject to the conditions hereinafter imposed for each use and subject further to review and approval by the City Commission as required by Section 4-550 of this ordinance dealing with conditional use permits:

1. Above ground class 1 and class 2 liquid storage tanks.
2. Wrecking and salvage yards when completely enclosed within a solid fence.
3. Stockyards.
4. Petroleum refining or storage.
5. Fertilizer manufacture.
6. Acid manufacture.
7. Cement, lime or gypsum manufacture.
8. Stockpiling of sand, gravel or fill dirt and any other materials.

9. Child Care Facility or Child Care Center which is connected to a business and is limited to handling children of employees of that business.
10. Landfills (but only outside of the limits of the City of West Fargo and within the City's extra-territorial jurisdiction as provided in section 4-130 of these ordinances).
11. Animal slaughter or rendering (but only outside of the limits of the City of West Fargo and within the City's extra-territorial jurisdiction as provided in Section 4-130 of these ordinances).
12. Temporary or permanent industrial wood burners, including air curtain destructors, subject to the following conditions:
 - a. For a permanent site, the site must be fenced with a sight obscuring fence and screened if necessary to keep materials out of sight.
 - b. The site is located a minimum of 2,640 feet from any residential or neighboring business structure.
 - c. The waste wood products may not be stored on a permanent or temporary site for more than two (2) months. For a permanent site, all waste wood products on site must be disposed of within a two (2) month period. At the time the site is completely cleared, another two-month cycle of storage may begin. An extension to the two-month period may be granted by the Fire Chief during the high fire risk times when burning is not allowed.
 - d. The use has received State Health Department and local Fire Department approval.
 - e. A permit for a temporary site may not exceed sixty (60) days, and only two (2) temporary permits may be granted for the same site in any year. The 60-day period may be extended by the Fire Chief if during that period burning is not allowed because of high risk conditions.
 - f. Other conditions as deemed necessary.
13. Indoor Personal Training Facilities, provided the facility has adequate separation from uses which may be injurious to health or pose life safety risk.

Source: Ord. 1078, Sec. 2 (2017)

14. Compassion centers as described further in Section 4-429.8.

Source: Ord. 1102, Sec. 3 (2017)

4-429.4. Prohibited Uses.

1. Residential: dwellings, dwelling units, and residences of any type, including hotels and motels.

2. Institutional: schools, retirement, nursing, or convalescent homes.
3. Landfills (within the city limits of the City of West Fargo).
4. Animal slaughter or rendering (within the city limits of the City of West Fargo).

4-429.5. Yard Requirements. None.

4-429.6. Other Applicable Regulations.

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-429.7. Adult Entertainment Centers--Location Restricted.
The location of adult entertainment centers, as hereinafter defined, shall be limited as hereinafter provided:

A. DEFINITIONS.

1. Adult Bookstore: An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals which are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.
2. Adult Cinema: An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time.
3. Adult Live Performance Theater: An enclosed building used on a regular basis for presenting live performances by singers, musicians, dancers, comedians, models, or any similar type of entertainers, which live performances are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons.
4. Adult Entertainment Center: An adult bookstore or adult cinema, or adult live performance theater.

5. Specified Anatomical Areas:

- a. Less than completely and opaquely covered:
 - (1) Human genitals, pubic region;
 - (2) Buttock;
 - (3) Female breast below a point immediately above the top of the areola; and
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

6. Specified Sexual Activities:

- a. Human genitals in a state of sexual stimulations or arousal;
- b. Acts of human masturbation, sexual intercourse, or sodomy;
- c. Fondling of human genitals, pubic region, buttock or female breast.

B. LOCATION: Notwithstanding anything in this zoning Ordinance to the contrary, an adult entertainment center shall be permitted only in the M District and in no other district, and then only if the center meets the following conditions:

- 1. The center is located no closer than 1250 feet from any pre-existing church, school, or property zoned R-1A, R-1, R-2, R-3, or R-4 in any jurisdiction.
- 2. The center excludes from its premises those persons less than 18 years of age.
- 3. The center displays no signs visible from the exterior of the center, except for signs identifying the center as an adult bookstore, adult cinema or adult live performance theater.
- 4. No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of the center.
- 5. The business premises of the center which are generally open to its patrons are open equally at the same time without charge to members of the city police force who may wish to enter thereon provided the entry is in the course of the discharge of the policeman's duties.

4-429.8. Compassion Centers-Location Restricted. The location of compassion centers, as hereinafter defined, shall be limited as hereinafter provided:

A. DEFINITIONS.

1. Compassion center: a medical marijuana manufacturing facility or dispensary.
2. Dispensary: an entity registered by the North Dakota State Department of Health as a compassion center authorized to dispense usable marijuana to a registered qualifying patient and a registered designated caregiver.
3. Manufacturing facility: an entity registered by the North Dakota State Department of Health as a compassion center authorized to produce and process and to sell usable marijuana to a dispensary.

B. LOCATION: Notwithstanding anything in this Zoning Ordinance to the contrary, a compassion center shall be permitted only in the LI District and M District, no other district shall be permitted, and then only if the compassion center meets the following conditions:

1. The compassion center is located no closer than one thousand two hundred fifty feet (1,250') from any pre-existing school, daycare facility, or any property zoned residential.
2. The business premises of the compassion center which are generally open to its patrons are open equally at the same time to members of the City police department and the City health officer who may wish to enter thereon provided the entry is in the course of the discharge of police duties and health inspection duties.

4-431. "CO" DISTRICT OR CORRIDOR OVERLAY DISTRICT.

4-431.1. Statement of Intent. The provisions of the CO District are intended to promote orderly development and safe, attractive and desirable spatial patterns and locations for urban and suburban land uses adjacent to the Cass County 17/Sheyenne Street, 32nd Avenue, 40th Avenue, 52nd Avenue, 9th Street East, Veteran's Boulevard and 13th Avenue corridors. Full regard is given for the importance of these corridors as major growth areas for West Fargo and as landscaped gateways to the City. The CO District shall extend along Cass County 17 (Sheyenne Street) from 13th Avenue East to 52nd Avenue and from 12th Avenue North to 40th Avenue North, 52nd Avenue from Cass County 17 to the west, 40th Avenue, 32nd Avenue, Veteran's Boulevard, 9th Street East from Interstate 94 to 13th Avenue, and 13th Avenue from Sheyenne Street to the east City limits hereinafter referenced to as "the designated streets," and be a depth of six hundred (600) feet on each side of the centerline of Cass County 17 (Sheyenne Street), 32nd Avenue, 40th Avenue, 52nd Avenue, 9th Street East, Veteran's Boulevard, and 13th Avenue.

Source: Ord. 1049, Sec. 24 (2015)

4-431.2. Permitted Uses. All uses permitted in any underlying district as designated on the City Zoning Map.

4-431.3. Conditionally Permitted Uses. Any use conditionally permitted in any underlying district as designated on the City Zoning Map and subject to the specific provisions relating to each use.

4-431.4. Yard Requirements for the CO District.

1. Side Yard Minimum. For commercially zoned lots, the minimum side yard shall be 10 feet. Residentially zoned property in the Corridor Overlay District shall maintain the side yard required in the underlying Residential District.
2. Rear Yard Minimum. For commercially zoned lots abutting the designated streets, the minimum rear yard shall be 20 feet. For commercially zoned lots not abutting the designated streets, the minimum rear yard shall be 10 feet. Residentially zoned property in the CO District shall maintain the same rear yard as required in the underlying residential district.
3. Front Yard Minimum. For the purpose of this ordinance, all front yards for properties abutting the designated streets shall be facing those streets. All front yards abutting a designated arterial or collector roadway, as approved by the City Commission, shall be considered facing that roadway. A minimum front yard depth of 45 feet shall be required for all properties abutting the designated street rights-of-way. Minimum front yard depths for commercially zoned property not abutting the designated streets shall be 15 feet, except where frontage is on a designated arterial or collector

roadway, as approved by the City Commission, where the minimum front yard depth shall be 30 feet. Depths for residentially zoned property not abutting the designated streets shall be the same as required for the underlying Residential Zoning District. For corner properties abutting the designated streets and an arterial or collector roadway, the secondary front yard which does not face the designated streets shall have a minimum front yard depth of 30 feet.

4. Lot Coverage. For commercial uses, lot coverage by buildings shall not exceed 40%; for residential uses, lot coverage shall be the same as in the underlying district.

4-431.5. Lot Design Standards.

1. Open Space Landscaping:

- a. All yard areas not covered by buildings, sidewalks or paved parking areas shall be landscaped. A minimum of 10% of the lot area shall be landscaped.
- b. For properties abutting the designated streets, a minimum of 20 feet of landscaped open space shall be required to separate parking areas or access drives and front lot lines. For properties not abutting the designated streets or an arterial or collector roadway, a minimum of 5 feet of landscaped open space shall be required to separate parking areas or access drives and front lot lines. For properties abutting a designated collector or arterial roadway, as approved by the City Commission, a minimum of 10 feet of landscaped open space shall be required to separate parking areas or access drives and front lot lines.
- c. A minimum of 5 feet of landscaped open space shall be required to separate parking areas from side and rear lot lines and a minimum of 5 feet of open space shall be required to separate parking areas and building setback lines.
- d. A minimum of 3 feet of landscaped open space shall be required to separate access driveways and side or rear lot lines unless said driveway is used as a common access to two adjacent properties.
- e. Ponds for management of storm water shall not count toward the minimum landscaped standard.

2. Building Construction:

- a. A higher construction standard is required in the Corridor Overlay District. In areas of the Corridor Overlay District, which is zoned Light Commercial, any exposed metal or fiberglass on all

buildings shall be limited to no more than thirty (30) percent of any wall which fronts on a public street, provided that it is coordinated into the architectural design. Seventy percent (70%) of any wall (facade area) which fronts on a public street shall be constructed of glass, brick, wood, stone, architectural concrete cast in place or precast concrete panels, or, as approved by the Commission(s), other integrated materials per the architectural design. In areas of the Corridor Overlay District which are also zoned Heavy Commercial/Light Industrial District and Heavy Industrial District, all buildings constructed of curtain wall panels of finished steel, aluminum or fiberglass shall be required to be faced with brick, wood, stone, architectural concrete cast in place or pre-cast concrete panels on all wall surfaces with frontage on a public street. The required wall surface treatment may allow a maximum of seventy (70) percent of the metal or fiberglass wall to remain exposed if it is coordinated into the architectural design.

- (1) Additions, Alterations, and Accessory Buildings. All subsequent additions, exterior alterations and accessory buildings, constructed after the erection of an original building or buildings shall be of the same materials as those used in the original building and shall be designed in a manner conforming to the original architectural concept and general appearance. These provisions shall not prevent the upgrading of the quality of materials used in a remodeling or expansion program.
 - (2) Appearance. Garages, accessory structures, screened walls and exposed areas of retaining walls shall be of a similar type, quality and appearance as the principal structure. These provisions shall not prevent the upgrading of the quality of materials used in a remodeling or expansion program.
3. Boulevard/Front Yard Plantings: The planting must be in conformance to the 13th Avenue Tree Planting Plan or other major street corridor landscape plan developed as part of a subdivision, Planned Unit Development, or other site development plan adopted by the City. Each tree shall be at least 1½ inches in caliper and all tree species shall be as recommended by the City Forester.
4. Curbs Required: All buildings and walkways bordering any parking areas shall be curbed.

5. Refuse Collection Areas and Outdoor Storage Areas: All refuse collection and outdoor storage areas shall only be permitted in rear yards and shall be visually screened from adjoining properties or streets.
6. Parking Areas:
 - a. All parking areas shall be paved to provide a durable and dust-free surface.
 - b. Light poles located within parking area perimeters shall be surrounded by curbed islands with a minimum distance of 4 feet from the center line of the light pole to the curb, or protected by an elevated concrete pedestal at least 3 feet in height and 2 feet in diameter.
 - c. Light poles located outside of paved parking areas shall be located a minimum of 4 feet from the curbed edge of the parking area, or protected by an elevated concrete pedestal of not less than 3 feet in height and 2 feet in diameter.
7. Fences: Fences along the Corridor Overlay District are not allowed within the required front yard along the designated streets of the development, except when a fence is an essential component of the development and is either approved as part of a Planned Unit Development for the development or as a conditional use. Special regard is given in residential areas for double frontage lots where the house faces a local street and the intended rear yard faces the designated street. Fences should be decorative and/or provide for added landscape treatments to meet the intent of the CO District and may be required to be set back to accomplish the intended effect. Once a fencing scheme has been approved, accessory buildings may be permitted, subject to the Supplementary District Regulations for accessory buildings and uses.

Source: Ord. 916, Sec. 38 (2012)

4-431.6. Other Applicable Regulations.

Section 4-440 Supplementary District Regulations
Section 4-450 Off-Street Parking and Loading Requirements
Section 4-460 Sign Regulations

Source: Ord. 675, Sec. 1 (2003)

4-431-A. "CO-I" DISTRICT OR INTERSTATE CORRIDOR OVERLAY DISTRICT

Source: Ord. 748, Sec. 14 (2005)

4-431-A.1. Statement of Intent. The provisions of the "CO-I" District are intended to promote orderly development and safe, attractive and desirable spatial patterns and locations for urban land uses adjacent to the Interstate 94 Corridor. Full regard is given for the importance of this corridor as a major growth area for West Fargo and as a highly visible gateway through the City. The "CO-I" District shall extend along the entire I-94 section within the City Limits and Extraterritorial Area and shall be an approximate depth of 600 feet on each side of the interstate right-of-way.

4-431-A.2. Permitted Uses. All uses permitted in any underlying district as designated on the City Zoning Map.

4-431-A.3. Conditionally Permitted Uses. Any use conditionally permitted in any underlying district as designated on the City Zoning Map and subject to the specific provisions relating to each use.

4-431-A.4. Plan Review and Approval. All development shall be subject to site and building plan review and approval by the Planning and Zoning Commission and City Commission.

4-431-A.5. Site Development Standards.

1. Yard Setbacks. Structures adjacent to I-94 shall be set back a minimum of 100 feet from the interstate right-of-way for single and two-family uses. Principal structures for multiple family uses shall be set back a minimum of 100 feet from the interstate right-of-way with accessory structures set back a minimum of 50 feet. All other structures shall maintain a minimum setback of 50 feet from the interstate right-of-way, except for structures adjacent to interstate on and off-ramps, which shall maintain a minimum setback of 30 feet. All other yard setbacks shall be according to requirements of the underlying district.
2. Lot Coverage. For commercial and other non-residential uses, lot coverage by buildings shall not exceed 40%; for residential uses, lot coverage shall be the same as in the underlying district.
3. Open Space Landscaping and Buffers.
 - a. All yards adjacent to I-94 shall be landscaped open space. At least one tree shall be installed along the Interstate frontage for every 50 feet of interstate frontage. Trees may be grouped to create the desired effect. All yard areas not covered by buildings, sidewalks or paved parking areas shall be landscaped. A minimum of 10% of the

lot area shall be landscaped. In addition to landscaped open space requirements along I-94, properties shall comply with the Open Landscaping requirements found in Section 4-431.5. pertaining to front, side and rear yards.

- b. Residential properties shall be buffered to minimize noise impacts from interstate traffic. Berming and vegetative buffers shall be created prior to development. For single family and two family uses berms shall be developed within an easement no less than 100 feet deep along I-94 and 30 feet deep along the on/off ramps and have a slope no greater than 3:1. Berms shall be required to be elevated six feet above the elevation of the driving lanes on I-94 with a lower elevation and more flexibility in design along the on/off ramps. The berms shall also have several rows of coniferous trees (evergreens) planted to provide year-round vegetative buffering. Berm easements should be placed so that there is minimal affect on utility easements. For multiple family residential uses, more flexibility is allowed in the design of berms and vegetative buffers.

4. Building Construction:

- a. A higher construction standard is required in the Interstate Corridor Overlay District. In areas of the Interstate Corridor Overlay District, which are zoned Light Commercial, Commercial Office Park, or Planned Unit Development and intended for light commercial uses, any exposed metal or fiberglass on all buildings shall be limited to no more than thirty (30) percent of any wall which fronts on a public street, provided that it is coordinated into the architectural design. Seventy percent (70%) of any wall (facade area) which fronts on a public street shall be constructed of glass, brick, wood, stone, architectural concrete cast in place or precast concrete panels, or, as approved by the Commission(s), other integrated materials per the architectural design. In areas of the Interstate Corridor Overlay District which are also zoned Heavy Commercial/Light Industrial, Heavy Industrial, or Planned Unit Development and intended for heavy commercial and industrial uses all buildings constructed of curtain wall panels of finished steel, aluminum or fiberglass shall be required to be faced with brick, wood, stone, architectural concrete cast in place or pre-cast concrete panels on all wall surfaces with frontage on a public street. The required wall surface treatment may allow a maximum of seventy (70) percent of the metal or fiberglass wall to remain

exposed if it is coordinated into the architectural design.

- (1) Additions, Alterations, and Accessory Buildings. All subsequent additions, exterior alterations and accessory buildings, constructed after the erection of an original building or buildings shall be of the same materials as those used in the original building and shall be designed in a manner conforming to the original architectural concept and general appearance. These provisions shall not prevent the upgrading of the quality of materials used in a remodeling or expansion program.
 - (2) Appearance. Garages, accessory structures, screened walls and exposed areas of retaining walls shall be of a similar type, quality and appearance as the principal structure. These provisions shall not prevent the upgrading of the quality of materials used in a remodeling or expansion program.
5. Outdoor Displays, Storage, Truck Parking or Loading. All outdoor displays, storage, truck parking or loading shall be located to the side or rear of the building and screened with materials of the principal building and other screening, so that such uses are not directly visible from the Interstate and other public streets. Outdoor display areas shall be identified on the site plan and be subject to site and building plan review and approval. Display areas shall be established in such a manner as not to detract from the desired affects of the Interstate Corridor Overlay District.

Source: Ord. 916, Sec. 39 (2012)

4-431-B. "CO-R" DISTRICT OR REDEVELOPMENT CORRIDOR OVERLAY DISTRICT

Source: Ord. 748, Sec. 14 (2005)

4-431-B.1. Statement of Intent. The provisions of the "CO-R" District are intended to promote orderly development and redevelopment and safe, attractive and desirable spatial patterns and locations for urban land uses adjacent to major street corridors, with full regard for the importance of these corridors as major growth areas for West Fargo and as gateways to the City. The "CO-R" District shall extend along the entire length of Main Avenue, 12th Avenue North, 8th Street West, Sheyenne Street north of 13th Avenue, Center Street, 9th Street East north of 13th Avenue and 45th Street. The depth of the "CO-R" District shall be generally the depth of the lots fronting on each side of the above described roadways.

4-431-B.2. Permitted Uses. All uses permitted in any underlying district as designated on the City Zoning Map.

4-431-B.3. Conditionally Permitted Uses. Any use conditionally permitted in any underlying district as designated on the City Zoning Map and subject to the specific criteria relating to each use.

4-431-B.4. Yard Requirements for the CO-R District.

1. Side Yard Minimum. For commercial and industrial zoned lots, the minimum side yard shall be 5 feet except on a corner lot a side yard facing a public way shall be 10 feet. Side yards may be reduced as a conditional use, particularly where it is intended to join buildings on narrow lots established in the downtown area. Residentially zoned property in the Corridor Overlay District shall maintain the side yard required in the underlying residential district.
2. Rear Yard Minimum. For commercially and industrially zoned lots in the "CO-R" District, the minimum rear yard shall be 10 feet. Residentially zoned property in the "CO-R" District shall maintain the same rear yard as required in the underlying residential district.
3. Front Yard Minimum. For commercially zoned property in the "CO-R" District, properties shall maintain a minimum front yard setback from any public street of 10 feet. Industrial properties shall maintain a front yard setback of 20 feet and side yard setback of 10 feet from a public street. Residentially zoned lots shall maintain a minimum front yard of 40 feet along the designated street. Double frontage lots shall provide a setback for the opposite front yard on the local street as required by the underlying district.

4. Lot Coverage. For commercial uses, lot coverage by buildings shall not exceed 65%; for industrial uses, lot coverage by buildings shall not exceed 85%; for residential uses, lot coverage shall be the same as in the underlying district.

4-431-B.5. Lot Design Standards.

4-431-B.5. Lot Design Standards.

1. Open Space Landscaping:

- A. All yard areas not covered by buildings, sidewalks or paved parking areas (or fenced storage yards in industrial districts) shall be landscaped with grass, trees and other landscaping as approved by the City.
- B. All required front yards and secondary front yards (side yards on corner lots fronting on a public street) shall be landscaped as open space.
- C. A minimum of 5 feet of landscaped open space shall be required to separate parking areas from side and rear lot lines and a minimum of 5 feet of open space shall be required to separate parking areas and building setback.
- D. A minimum of 3 feet of landscaped open space shall be required to separate access driveways and side or rear lot lines, unless side driveway is used as a common access to two adjacent properties.
- E. Ponds for management of storm water shall not count toward the minimum landscaped standard.

2. Building Construction: A higher construction standard is required in the Redevelopment Corridor Overlay District. In areas of the Redevelopment Corridor Overlay District, which is zoned Light Commercial, any exposed metal or fiberglass on all fronting buildings shall be limited to no more than thirty (30) percent of any wall which fronts on a public street, provided that it is coordinated into the architectural design. Seventy percent (70%) of any wall (facade area) which fronts on a public street shall be constructed of glass, brick, wood, stone, architectural concrete cast in place or precast concrete panels, or, as approved by the Commission(s), other integrated materials per the architectural design. In areas of the Redevelopment Corridor Overlay District which are also zoned Heavy Commercial/Light Industrial District and Heavy Industrial District, all fronting buildings constructed of curtain wall panels of finished steel, aluminum or fiberglass shall be required to be faced with brick, wood, stone, architectural concrete

cast in place or pre-cast concrete panels on all wall surfaces with frontage on a public street. The required wall surface treatment may allow a maximum of seventy (70) percent of the metal or fiberglass wall to remain exposed if it is coordinated into the architectural design. Truck loading dock areas shall be to the side or rear of the building so that they do not face a public street. Where this is not possible, special approval shall be required by the Planning and Zoning Commission and City Commission, and screening of the truck loading dock shall be considered.

- (1) Additions, Alterations, and Accessory Buildings. Buildings which are expanded or remodeled on the public street sides, or buildings which are expanded or remodeled by 25% of the building value shall conform to the building standards established above.
 - (2) Appearance. Garages, accessory structures, screened walls and exposed areas of retaining walls shall be of a similar type, quality and appearance as the principal structure. These provisions shall not prevent the upgrading of the quality of materials used in a remodeling or expansion program.
3. Refuse Collection Areas and Outdoor Storage Areas: All refuse collection and outdoor storage areas shall only be permitted in side or rear yards and shall be visually screen from adjoining properties or streets.
4. Parking Areas:
 - A. All Parking areas shall be paved with asphalt or concrete to provide a durable and dust-free surface. Existing buildings which are remodeled or expanded by 25% of the building value shall upgrade unpaved parking areas to a paved condition with asphalt or concrete.
 - B. Light poles located within parking area perimeters within front yards shall be surrounded by curbed islands with a minimum distance of 4 feet from the center line of the light pole to the curb, or protected by an elevated concrete pedestal at least 3 feet in height and 2 feet in diameter.
 - C. Light poles located outside of paved parking areas shall be located a minimum of 4 feet from the curbed edge of the parking area, or protected by an elevated concrete pedestal of not less than 3 feet in height and 2 feet in diameter.
5. Fences: Fences along the Redevelopment Corridor Overlay District are not allowed within the required front yard,

except when a fence is an essential component of the development and is either approved as part of a Planned Unit Development for the development or as a conditional use.

Source: Ord. 916, Sec. 40 (2012)

4-431-B.6. Other Applicable Regulations.

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-431-C. "CO-SR" DISTRICT OR SHEYENNE RIVER CORRIDOR OVERLAY DISTRICT

4-431-C.1. Statement of Intent. The provisions of the "CO-SR" District are intended to promote orderly, safe and desirable development patterns along the Sheyenne River where unstable soil conditions exist. The "CO-SR" Districts shall extend along the entire Sheyenne River Corridor and shall be approximately 100 feet from the established river bank.

4-431-C.2. Building Control Line and Use Restrictions. The City hereby establishes a building control line along the Sheyenne River within the Corporate limits of the City of West Fargo and within the Extraterritorial Jurisdiction limits of the City. The building control line shall be 100 feet from the established riverbank as determined by the City Engineer. The building control line shall be the minimum setback line for any primary and accessory structures requiring permits, parking lots, fill and other development activities which may cause increased riverbank destabilization.

4-431-C.3. Relaxation of Use Restrictions. Where it can be demonstrated through a soils analysis that soils are stable within the building control area, the City Commission may consider reducing the required minimum setback by variance. The soils analysis shall be conducted by a qualified professional engineer and demonstrate that the soils can accommodate the type of structure, parking lot or other use without sustaining future damage. No use may be closer than fifty (50) feet from the established riverbank.

4-431-C.4. Existing Nonconforming Uses and Structures. Existing nonconforming uses and structures shall not be expanded unless in conformity with the provisions of the "CO-SR" District. Where required setbacks cannot be achieved, relaxation of setbacks may be pursued according to Section 4-431-C.3. Nonconformities are subject to Section 4-470.

4-431-C.5. Landscape Standards. Properties within the "CO-SR" District shall follow the landscape standards established in Section 4-449-A.

4-431-D. "CO-S" DISTRICT or SHEYENNE STREET CORRIDOR OVERLAY DISTRICT
Source: Ord. 976, Sec. 1 (2013)

4-431-D.1. Statement of Intent. The provisions of the "CO-S" District are intended to ensure that future development of land conforms to the design and intent of the Sheyenne Street and Main Avenue Framework Study. These standards will help guarantee the development occurring within this district are sited and built to standards that will support the vision of the study. The vision for the Sheyenne Street Corridor is to create a unique destination in the historic core of West Fargo that will improve the image of the area, create public and private investment opportunities, and improve economic performance of underperforming properties that will create a vibrant 'heart' to the City of West Fargo. The CO-S District shall extend along the length of Sheyenne Street between 7th Avenue West and Main Avenue West and include only the properties with frontage on Sheyenne Street.

4-431-D.2. Area Definition. The "CO-S" District shall include the blocks along Sheyenne Street between 7th Avenue West and Main Avenue West and include only properties with frontage on Sheyenne Street.

4-431-D.3. Permitted Uses.

1. Retail businesses, such as general merchandise, food, liquor, hardware, furniture, and apparel stores; eating and drinking establishments; and drugstores.
2. Business services, such as banks, and other financial institutions, and professional offices.
3. Personal services, such as barber and beauty shops, photographic studios, laundromats and dry cleaning establishments.
4. Entertainment, social or recreational businesses, such as bowling alleys, health clubs, theaters (excluding drive-ins), night clubs, private clubs and lodges.
5. Medical and dental facilities, not including Behavioral Health Care Facility.
6. Veterinary clinics without overnight facilities.
7. Hotels and motels.
8. Gas station and convenience store.
9. Grocery Store.
10. Essential services.

11. Other: Uses not listed but similar to the permitted uses above and consistent with the stated purpose of this district.

Source: Ord. 1049, Sec. 25 (2015)

4-431-D.4. Conditionally Permitted Uses. The following use may be permitted in the C District subject to the conditions hereinafter imposed and subject further to review and approval by the City Commission as required by Section 4-550 of this Ordinance:

1. Apartments above commercial establishments; subject to the following conditions:
 - a. Any apartment shall be provided with off-street parking the same as for multiple dwellings.
 - b. Any apartment shall be provided with private access.
2. Multiple dwellings, including condominiums, excluding the ground floor.
3. Repair services, such as radio shops, appliance shops, upholstery shops and shoe repair shops.
4. Churches and schools.
5. Public/semi-public facilities, such as armories, parks, police and fire stations; telephone exchange buildings, and civic centers.
6. Child Care Facility, Child Care Center and Family Child Care Home in an existing residential building or in a non-residential building.
7. Behavioral Health Care Facility.

Source: Ord. 1049, Sec. 26 (2015)

4-431.D.5. Site Design Standards. Site design standards govern all of the major site elements from the face of the building to the back of the curb and shall include the building orientation and entrances, building location and setbacks, parking areas, and landscaping and open space requirements.

1. Building Orientation and Entrances. For all properties located along Sheyenne Street, the front façade of buildings shall be oriented towards Sheyenne Street with the main entrance on this front façade. On corner properties, a secondary entrance along the side street is encouraged but not required. When buildings are located on corners, the entrance may be located on the corner with an appropriate building articulation, such as chamfered corner, turret, canopy, or other similar architectural feature to distinguish the entry.

2. Building Location and Setbacks.

- a. Front Yard Setback. All buildings fronting Sheyenne Street shall incorporate a required zero setback build-to line established at the front property line. Deviation from the zero setback requirement may be allowed for buildings that wish to add additional usable space, i.e. dining areas; driving isles, as approved by the Design Review Committee.
- b. Side Yard Setback. New construction on properties that share an internal property line shall have a required zero setback. Corner lots shall have a zero setback for the external lot line. Deviation from the zero setback requirement may be allowed for the external lot line on corner lots for buildings that wish to add addition usable space, i.e. dining areas; driving isles, as approved by the Design Review Committee. Existing buildings are encouraged to conform to the zero setback when making addition(s) to the building. It shall be required to conform to the zero setback when the value of the cumulative addition(s) after the adoption of this ordinance are equal or greater than 25 percent of the assessed value of the property.
- c. Rear Yard Setback. New construction on properties within the "CO-S" district is required to facilitate parking in the rear yard. When this is the case, the minimum setback will be determined by the total required parking spaces and the minimum parking standards, as spelled out in Chapter 4-450: Off-Street Parking and Loading Requirements, and approved by the City Planner. Properties with existing buildings shall maintain the same rear yard as required in the underlying zoning district.

3. Parking Areas. Parking in the "CO-S" district shall adequately serve the users without detracting from the compact, pedestrian friendly design that is spelled out in the Sheyenne Street and Main Avenue Framework Study.

- a. All parking areas for new construction shall be located in the rear of buildings.
- b. All parking areas shall be paved to provide a durable and dust free surface.
- c. Light poles located within parking area perimeters shall be surrounded by curbed islands with a minimum distance of 4 feet from the center line of

the light pole to the curb and shall be planted with four season vegetation.

- d. Shared parking areas are recommended.
- e. Parking requirements for retail commercial uses in the CO-S district will be calculated at 2 spaces per 1000 square feet floor area.
- f. Parking requirements for service commercial uses will be calculated at 3 spaces per 1000 square feet of floor area.
- g. Existing buildings that have met the Sheyenne Corridor Overlay District Building and Construction Standards that have existing parking areas that cannot meet the CO-S setbacks may submit a parking plan showing reduced setback to the Review Committee to assure maximum parking and compliance with Sheyenne Street and Main Avenue Framework Study.

4. Landscape and open space requirements.

- a. A minimum 5 foot decorative and/or vegetative buffer shall separate parking areas from front and side property lines.
- b. A minimum 5 foot landscaped space shall separate parking areas from buildings.
- c. Additional corridor landscaping shall be done in accordance with the City of West Fargo Landscape Standards, as approved by City Commission.

5. Building Construction. A higher construction standard is required in the Sheyenne Street Corridor Overlay District.

- a. A minimum of 70 percent of the length of the ground floor front façade shall consist of windows, glass doors, or other transparent materials. The remaining area of the ground floor façade shall be constructed of durable non-metal materials as spelled out in the Sheyenne Street Corridor Development Guidelines.
- b. A minimum of 30 percent of all remaining floors shall consist of windows, glass doors, or other transparent materials. The remaining areas shall be constructed of durable non-metal materials as spelled out in the Sheyenne Street Corridor Development Guidelines.

- c. New construction on corner lots shall have a minimum of 30 percent of the ground floor side façade shall consist of windows, glass doors, or other transparent materials. The remaining areas shall be constructed of durable non-metal materials as spelled out in the Sheyenne Street Corridor Development Guidelines.
- d. New construction shall be a minimum of two floors in height. A third floor may be considered upon review of soils showing it can be supported.
- e. Additions of more than 25% of the assessed value of the property cumulative after the adoption of this ordinance will require compliance with building construction standards.

6. Refuse Collection Areas and Outdoor Storage Areas.

- a. All refuse collect and outdoor storage areas shall only be permitted in rear yards and shall be visually screened from adjoining properties or streets.

Source: Ord. 916, Sec. 66 (2012); Ord. 976, Sec. 1 (2013)

4-431-E. "CO-M" DISTRICT OR MAIN AVENUE OVERLAY DISTRICT

Source: Ord. 976, Sec. 2 (2013); Ord. 1049, Sec. 27 (2015)

4-431-E.1. Statement of Intent. The provisions of the "CO-M" District are intended to ensure that future development of land conforms to the design and intent of the Sheyenne Street and Main Avenue Framework Study. These standards will help guarantee the development occurring within this district are sited and built to standards that will support the vision of the City of West Fargo. The vision for the Main Avenue Corridor is to create an environment that will improve the image of the area, create public and private investment opportunities, and improve economic performance of underperforming properties. The CO-M District shall extend along the length of Main Avenue between 4th Street East and 6th Street West.

4-431-E.2. Permitted Uses.

1. Retail businesses, such as general merchandise, food, liquor, hardware, furniture, appliance, and apparel stores; eating and drinking establishments; and drugstores.
2. Business services, such as banks, and other financial institutions, and professional offices.
3. Personal services, such as barber and beauty shops, and photographic studios.
4. Entertainment, social or recreational businesses, such as bowling alleys, health clubs, and theaters (excluding drive-ins).
5. Cultural and educational facilities, such as trade schools, business colleges, and adult education centers.
6. Public facilities.
7. Medical and dental facilities, such as clinics and hospitals, not including Behavioral Health Care Facility.
8. Veterinary clinics without overnight facilities.
9. Hotels and motels.
10. Greenhouses and plant nurseries.
11. On-premise signs.
12. Essential services.
13. Other: Uses not listed but similar to the permitted uses above and consistent with the stated purpose of this district.

4-431-E.3. Conditionally Permitted Uses. The following use may be permitted in the "CO-M" District subject to the conditions hereinafter imposed and subject further to review and approval by the City Commission as required by Section 4-550 of this Ordinance:

1. Automobile service stations and automobile repair shops, not including auto body shops.
2. Fast food establishments with drive-thru access and/or curb side service.
3. Behavioral Health Care Facility.

4-431-E.4. Yard Requirements for the CO-M District.

1. Side Yard Minimum. New construction on properties zoned CM: Heavy Commercial/Light Industrial within the CO-M District shall maintain a minimum side yard setback of 10 feet, except on a corner lot with a side yard facing a public way which shall be 15 feet. An exception to this setback may be approved if adjoining properties share a legal access between buildings. Minimum distance between buildings will be dictated by off-street parking and loading regulations spelled out in Chapter 4-450 of this ordinance.
2. Rear Yard Minimum. Properties shall maintain a minimum rear yard setback of 10 feet. Rear yard setback may be reduced as a conditional use.
3. Front Yard Minimum. New construction on properties zoned CM: Heavy Commercial/Light Industrial shall maintain a minimum front yard setback from any public street of 25 feet. New construction on properties zoned C: Light Commercial shall incorporate a required zero setback at the front property line. Deviation from zero setback requirement may be allowed if reviewed and approved by the Design Review Committee.
4. Lot Coverage. Lot coverage by buildings shall not exceed 65%.

4-431-E.5. Lot Design Standards.

1. Open Space Landscaping:
 - A. All yard areas not covered by buildings, sidewalks or paved parking areas (or fenced storage yards in industrial districts) shall be landscaped.
 - B. All required front yards and secondary front yards (side yards on corner lots fronting on a public street) shall maintain a minimum of 5 feet of open space between front property line and parking areas.

- C. A minimum of 5 feet of landscaped open space shall be required to separate parking areas from side and rear lot lines and a minimum of 5 feet of open space shall be required to separate parking areas and building setback.
 - E. Ponds for management of storm water shall not count toward the minimum landscaped standard.
 - F. All properties along Main Avenue must comply with the West Fargo Landscape Standards.
2. Building Construction: A higher construction standard is required in the Main Avenue Corridor Overlay District. Any exposed building surface fronting Main Avenue shall be constructed of non-metal materials. Materials shall include brick, stone, architectural concrete cast in place, EIFS, or other like materials as approved by the Design Review Committee.
- (1) Additions and Alterations. All subsequent additions that are equal to or greater than twenty five (25) percent of the value of the building must comply to the landscape and building construction standards. Interior and/or exterior building alterations are allowed if no square footage is added to the building.
 - (2) Existing properties with non-conforming setbacks may not increase non-conformity. Such properties must comply with landscape and building construction standards, where possible, if valuation threshold is reached. An exception to the side yard setback and landscaping standards may be approved if adjoining properties share a legal access between buildings.
3. Refuse Collection Areas and Outdoor Storage or Display Areas: All refuse collection and outdoor storage areas shall only be permitted in side or rear yards and shall be visually screen from adjoining properties or streets. Outdoor display shall be limited and subject to review and approval by the Design Review Committee.
4. Parking Areas:
- A. All Parking areas shall be paved to provide a durable and dust-free surface.
 - B. Light poles located within parking area perimeters within front yards shall be surrounded by curbed islands with a minimum distance of 4 feet from the center line of the light pole to the curb, or protected by an elevated concrete pedestal at least 3 feet in height and 2 feet in diameter.

- C. Light poles located outside of paved parking areas shall be located a minimum of 4 feet from the curbed edge of the parking area, or protected by an elevated concrete pedestal of not less than 3 feet in height and 2 feet in diameter.
- 5. Fences: Fences along the Main Avenue Corridor Overlay District are not allowed within the required front yard. Any fence in side or rear yards must be of an architectural color and quality that is similar to primary structure.

4-431-E.6. Other Applicable Regulations.

Section 4-440 Supplementary District Regulations

Section 4-450 Off-Street Parking and Loading Requirements

Section 4-460 Sign Regulations

4-432. "PUD" DISTRICT FOR PLANNED UNIT DEVELOPMENT DISTRICT

4-432.1. Statement of Intent. The provisions of the PUD District are established to provide comprehensive procedures and standards designed to allow greater flexibility, uniqueness, innovative design and energy conservation in the development or redevelopment of areas of the community by developing adjacent to, or by incorporating within a mixture of densities/intensities or use types. The benefits of the PUD are intended to be significant as to warrant modifications of the standards required under other district regulations. These provisions are further intended to promote conservation and more efficient use of land, higher standards of site and building design and the preservation and enhancement of desirable site characteristics such as natural topography, scenic features and open spaces. It is also intended that these provisions will give the developer reasonable assurance of ultimate approval before expending complete design monies while providing City officials with assurances that the project will retain the character envisioned at the time of concurrence.

Source: Ord. 476, Sec. 1 (1994).

4-432.2. Permitted Uses. Any use which is permitted by this ordinance within the residential, commercial or industrial districts shall be considered as potentially allowable within a PUD District.

Source: Ord. 476, Sec. 2 (1994).

4-432.3. Who May Apply--Ownership Requirements. An application for approval of a PUD shall be filed in the name(s) of the recorded owner(s) of property included in the development. However, the application may be filed by holder(s) of an equitable interest in such property. Before approval of a plan can be obtained, the applicant must show evidence of full ownership interest in the land (legal title or the execution of a binding sales agreement). The entire project must be in single ownership by the time the final development plan can be approved.

4-432.4. Minimum Areas Generally Required. The tract of land for which a PUD project is proposed shall be a minimum of 2 acres. Areas of less than 2 acres may qualify as a PUD project if the applicant can show that the waiving of this requirement is in the public interest and that at least one of the following conditions is met:

- a. Unusual physical features of the site or the surrounding neighborhood are such that development under a different zoning district would not conserve the unique physical features of the site or would not allow functional or environmental compatibility with the surrounding neighborhood.
- b. The site is adjacent to an area which has been developed under the provisions of a Planned Unit Development

District and will contribute to the amenity and functionality of the neighborhood.

- c. The site is part of an urban redevelopment and/or spot renewal program, provided it does not conflict with the nature of the surrounding neighborhood.

4-432.5. Coordination with Subdivision Regulations. It is the intent of this article that subdivision review be carried out simultaneously with the review of a Planned Unit Development and that the development plans submitted under this article be submitted in a form which will satisfy the requirements of the subdivision control regulations for preliminary and final plats.

4-432.6. Administrative Procedure. Administrative approval is to be obtained for a PUD project at two stages: (1) the Planning and Zoning Commission is to review and give preliminary approval to a Concept Development Plan for the total area of the proposed PUD District; and, (2) final approval is to be given to a Detailed Development Plan by the Planning and Zoning Commission and the City Commission for the total site development or for sub-areas of the proposed PUD District. Prior to these two steps, the prospective applicant should submit to the Planning and Zoning Commission and its staff, preliminary plans and sketches and basic site information for consideration and advise as to the relation of the proposal to general development objectives to be attained in the area and as to the policies of the Commission with reference thereto.

A. Preliminary Approval of a Planned Unit Development Project

1. The proponents of a PUD project shall submit a Concept Development Plan to the Planning and Zoning Commission.
2. The Concept Development Plan shall consist of the following:
 - a. A legal description of the property.
 - b. A statement describing the general character of the intended development.
 - c. An accurate map of the project area showing the proposed site and its proposed land uses, and the adjacent properties and their present urban or projected land uses.
 - d. The pattern of proposed land uses including the shape, size and arrangement of proposed use areas, density, and environmental character.
 - e. The pattern of public and/or private streets.

- f. Proposed open space and public sites.
- g. Preliminary number, size and concept of the proposed structures within each area.
- h. An outline for the anticipated schedule and sequence of development in terms of sub-areas for the total PUD District.
- i. Preliminary Subdivision plat.

3. Referral and Hearing

- a. On receipt of the application and the Concept Development Plan, the Planning Commission and its staff shall study the proposal to determine conformity with the City's Comprehensive Plan and the above requirements. This shall be done at the first regularly scheduled meeting of the Planning Commission.
- b. In reviewing the plan, the Planning Commission shall determine if the proposed development is consistent with the intended purposes of the PUD District, with the Comprehensive Plan, and with the overall development of the City of West Fargo. The design may provide for the modification of yards, setbacks, and height requirements, but the density, intensity of use, and lot coverage requirements for residential developments for the district as a whole shall not be reduced below that required in the R-3 District.
- c. The Planning Commission will hold a public hearing on the Concept Development Plan, after notification of the surrounding property owners, and will notify the applicant of its decision to approve, approve with modifications, or disapprove the plan.
- d. Approval of the rezoning and the related Concept Development Plan shall establish the basic right to use the area in conformity with the plan as approved, and shall be recorded as an integral component of the district regulations, but such plan is conditioned upon approval of a Detailed Development Plan, and shall not make permissible any of the uses as proposed until a Detailed Development Plan is submitted and approved for all or a portion of the Concept Development Plan.

B. Final Approval of a Planned Unit Development Project

1. In order to secure final approval and designation as a PUD District for a proposed site, the applicant will submit to the City Planning Commission a Detailed Development Plan of any or all of the agreed to site sub-areas.
2. The Detailed Development Plan for any or all PUD District shall consist of the following:
 - a. A final subdivision plat including lot lines, easements, public rights-of-way, etc.
 - b. A map of the site illustrating the following:
 - (1) Size, location and arrangement of buildings including building spacing, setbacks, yards, etc.
 - (2) Parking areas, private and public streets, sidewalks, and other transportation facilities.
 - (3) Landscaping, screening and final ground contours,
 - (4) Common open spaces and/or recreation areas.
 - (5) Sewer, water, and other utility lines.
 - c. Where applicable, a written statement outlining the ownership and maintenance responsibility of the common open spaces and recreation areas and documentation of this responsibility.
 - d. A written agreement with the City of West Fargo providing that should the improvements set forth in the illustration above fail to be completed within 18 months after the initiation of construction, as provided for in Subsection 5 below, then and in that event the City of West Fargo shall be authorized to provide for the installation of said improvements. The installation of said improvements shall be paid for by utilization of the special assessment process, for such cases made, and the developer so involved shall, as a part of the agreement waive any rights s/he might otherwise have to protest said special assessments.

3. The proponents of the PUD project shall secure the final approval for the designated section of the PUD area from the Planning Commission and the City Commission.
 4. Upon approval of the Planning Commission and the City Commission, the Detailed Development Plan is attached to and is part of the ordinance establishing the zoning designation of the land. The Detailed Development Plan is the document on which building permits and other City development approvals are issued. The City Building Inspectorate is not authorized to issue permits for improvements which are not indicated on the approved plan.
 5. Construction of the PUD shall be started within 2 years from the effective date of approval of the plan by the City Commission. Failure to begin the development within 2 years shall automatically void the development plan and another detailed development plan must be submitted and approved prior to any development of the property.
- C. Establishing Zoning in Advance of Development Plans: Circumstances may arise where the planned development may be proposed in phases over a longer period of time, or the development consists of multiple properties which may be owned separately or may be sold to another party prior to development. In such an event, the proponent(s) of a PUD may seek to rezone the property initially to PUD with the consideration of the Detailed Development Plan at a later date according to the following procedures.
1. The proponents of a PUD development shall initially submit a Concept Development Plan to the Planning and Zoning Commission as outlined previously.
 2. The Planning and Zoning Commission shall hold a hearing on the proposed Concept Development Plan after notification of the surrounding property owner, and will notify the applicant of its decision to approve, approve with modifications, or disapprove the plan. Following a public hearing before and consideration by the Planning and Zoning Commission, the Commission shall submit in writing its recommendations on the proposed zoning ordinance amendment, supplement, change or modification to the City Commission within sixty (60) days after receipt thereof. Said recommendations shall include approval, disapproval or other suggestions and the reasons thereof, and a discussion of the effect of each amendment, supplement, change or modification on the

Comprehensive Plan. Said recommendations shall be of an advisory nature only.

3. After receipt of the recommendation on any zoning ordinance amendment from the Planning and Zoning Commission, or in any event of the failure of the Planning and Zoning Commission to so report, within ninety (90) days from the time of referral of the proposed amendment to the Planning and Zoning Commission, the Board of City Commissioners shall hold a public hearing, after which the proposed amendment may be passed. If a protest against a change, supplement, modification, amendment, or repeal is signed by the owners of twenty per cent or more:
 - a. Of the area of the lots included in such proposed change; or
 - b. Of the area adjacent, extending one hundred fifty feet (45.72 meters) from the area to be changed, excluding the width of streets or other public right-of-way, the amendment shall not become effective except by the favorable vote of three-fourths of all the members of the City Commission. All protests must be filed with the City Auditor, in writing, prior to the time set for the hearing.
 - c. Upon establishment of any regulation, restriction, or boundary hereunder the governing body of West Fargo shall file a certified copy thereof with the City Auditor and shall cause notice of the same to be published in the official newspaper of the City. Said notice shall describe the nature, scope, and purpose of the regulation, restriction, or boundary, and shall state the times at which it will be available to the public for inspection and copying at the Office of the City Auditor.
4. PUD Amendment: Prior to any building permit for development within the PUD, the proponent of a project shall submit to the Planning and Zoning Commission an application and Detailed Development Plans for the property as outlined previously, which will be considered a PUD Amendment. The Planning and Zoning Commission shall hold a hearing on the proposed PUD Amendment after notification of the surrounding property owners, and will notify the applicant of its decision to approve, approve with modifications, or disapprove the plan. The PUD Amendment shall be reviewed for consistency with the Comprehensive Plan and for compatibility

with characteristics of other uses within the designated PUD area and other uses in the adjoining areas. Following a public hearing before and consideration by the Planning and Zoning Commission, the Commission shall submit in writing its recommendations on the proposed PUD Amendment to the City Commission. Said recommendations shall include approval, disapproval or other suggestions and the reasons thereof, and a discussion of the effect of the PUD Amendment on the Comprehensive Plan. Said recommendations shall be of an advisory nature only.

5. After receipt of the recommendation from the Planning and Zoning Commission, the City Commission shall review the Detailed Development Plan for the PUD Amendment and approve, approve with modifications or conditions, or deny the request. The Detailed Development Plan is attached to and is part of the Zoning designation of the property. The Detailed Development Plan is the document on which building permits and other City development approvals are issued. The City Building Inspector is not authorized to issue permits for improvements which are not indicated on the approved plan.
 6. A written agreement as outlined previously shall be signed, which includes terms and conditions for the development and provides for installation of improvements as outlined previously.
- D. Amendments: Any change in the Detailed Development Plan shall first be submitted for approval to the City Planning Commission, and if, in the opinion of the Planning Commission, such change constitutes substantial alteration of the original plan, especially with regards to a change in land use or an increase in development density or intensity, the procedure provided in Sections C.4-C.6 above shall be required.

Source: Ord, 916, Sec. 41 (2012)

4-433. "P" DISTRICT OR PUBLIC FACILITIES DISTRICT.

4-433.1. Statement of Intent. The P District is established to promote the development, maintenance, use and identification of land and structures owned by the City, West Fargo Park District or West Fargo School District.

4-433.2. Permitted Uses.

1. City owned facilities, including city hall, libraries and other municipal buildings and open space.
2. Park District owned facilities, including parks, open space, golf courses, and other publicly owned athletic or recreational facilities.
3. School District owned facilities, including schools, and athletic fields or stadiums.
4. Essential services.
5. Accessory uses and activities customarily incidental to and found with the permitted uses set forth above.

4-433.3. Conditionally Permitted Uses.

1. Off Site Signs. In granting such a conditional use the City may impose height and other size requirements, as well as other requirements deemed necessary by the City to have such signs fit into the area in which they are proposed to be established.

4-433.4. Yard Requirements. None, except if the property abuts another zoning district, buildings and other structures must be set back at a minimum the same distance as is required in the abutting district.

Source: Ord. 595, Sec. 1 (2000).

4-440. SUPPLEMENTARY DISTRICT REGULATIONS.

Subsections:

- 4-441. General Fencing and Screening Requirements.
 - 4-442. Accessory Building and Use Provisions.
 - 4-443.
 - 4-444. Erection of More Than One Principal Structure on a Lot.
 - 4-445. Structures to Have Access.
 - 4-446. Currently Licensed Motorized Vehicle and Equipment Parking in Residential District.
 - 4-447. Parking and/or Storage of Certain Vehicles and Materials.
 - 4-448. Provisions of Home Occupations.
 - 4-449. Wireless Telecommunications.
 - 4-449-A. Landscaping Standard.
 - 4-449-B. Wind Energy Systems Standards. (Source: Ord, 916, Sec. 69 (2012))
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4-441. GENERAL FENCING AND SCREENING REQUIREMENTS.

1. DEFINITION OF FENCE. An artificially constructed structure of any material or combination of material erected to enclose or screen areas of land.
2. GENERAL FENCING AND SCREENING REQUIREMENTS FOR RESIDENTIAL AREAS. In any residential district, fences, hedges, and plantings may be permitted in the buildable area and in any required yard, or along the edge of any yard, provided that no fence or hedge along the sides or front edge of any required front yard shall be over two and one-half (2½) feet in height, except on through lots or double frontage lots where one of the front yards is intended to serve as the rear yard and is consistent with the other lots on the block, a fence or hedge may be up to six (6) feet in height. All fencing and screening shall meet visibility requirements for intersections by not impeding vision between a height of two and one-half (2½) feet and ten (10) feet within thirty (30) feet from the intersecting curb lines, or within twenty (20) feet from the intersecting property lines if there is no curb. Coordinated fencing schemes for the block are strongly encouraged, and if possible developed during the subdivision process. No fence or hedge within any buildable area or along any side or rear lot line shall be over six (6) feet in height.

Open fences such as a split rail or chain link without slats, which permit direct vision through at least 50% of the fence surface area shall be allowed a height of four (4) feet along the sides or front edge of any front yard.

3. REQUIRED FENCING AND SCREENING. Where any business, industrial users, or multiple-family buildings of four (4) or more units (i.e., structure, parking or storage) abuts property zoned for residential use, that business, industry, or multiple-family building shall provide screening along the boundary of the residential property. Screening shall also be provided where a business, industry, or multiple-family building of four (4) or more units is across the street from a residential zone, but not on that side of a business, industry, or multiple-family building considered to be the front yard. Provided, however, that the provisions of this section will not apply where a multiple-family building abuts a property also zoned for multiple-family use. All fencing and screening specifically required by this section shall meet visibility requirements for intersections and other requirements as stated herein, and shall consist of either a fence or green belt planting strip. A required screening fence shall be constructed of masonry, brick, wood or metal. Such fence shall provide a solid screening effect six (6) feet in height for multiple-family uses and at least six (6) feet in height for business and industrial uses. A green belt planting strip shall consist of evergreen trees and/or deciduous trees and plants and shall be of sufficient width and density to provide an effective visual screen. This planting strip shall be designed to provide substantial visual screening to a minimum height of six (6) feet. Earth mounding and berms may be used but shall not be used to achieve more than three (3) feet of the required screen, unless otherwise provided for by the City (i.e., PUD requirements).
4. CONSTRUCTION STANDARDS. No fence, hedge, or plantings shall be constructed or maintained with electrified barbed wire, or other spiked materials which may pose injurious to public health and safety. Posts and other supporting structures used in the construction of fences shall be faced inward toward the property being fenced.
5. PRIVATE RECREATIONAL FENCES. Private recreational fences shall conform to the provisions attached to residential fences. Swimming pool fences shall be six (6) feet in height.
6. PUBLIC FENCES. Fences used in connection with public facilities and public recreational uses shall have a maximum height of ten (10) feet in any yard and be of the open fence variety. Residential construction standards shall apply to all public fences.
7. NON-RESIDENTIAL FENCES. Fences in light commercial areas shall conform to the provisions of residential fences. Fences in industrial or agricultural districts shall conform to the provisions attached to residential fences

except where the Building Administrator determines it would be in the public welfare to add to fence height or to add security materials onto the fence. In such cases, fences shall not exceed ten (10) feet in height.

8. TEMPORARY FENCES. Temporary fences needed to enclose sites, such as construction sites, do not require fencing permits.

SOURCE: Ord. 530, Sec. 6 (1997).

4-441.1. BUILDING CONSTRUCTION STANDARDS. Principal and accessory buildings constructed within the planning and jurisdictional limits of the City shall be according to the following standards:

1. No visible galvanized or unfinished steel, galvalum or unfinished aluminum buildings (walls or roofs), except those specifically intended to have a corrosive designed finish such as corten steel, nor any corrugated materials shall be permitted in any zoning district, except in association with farming activities, or if located in an industrial zone not identified within Corridor Overlay, Interstate Corridor Overlay, or Redevelopment Corridor Overlay districts and approved for use by the Planning and Zoning Commission.
2. Buildings in all zoning districts shall maintain a high standard of architectural and aesthetic compatibility with surrounding properties to insure that they will not adversely impact the property values of the abutting properties or adversely impact the public health, safety, and general welfare.
3. Exterior building finishes shall consist of materials comparable in grade and quality to the following:
 - a. Brick.
 - b. Natural Stone.
 - c. Decorative concrete block, except for single and two-family residential uses.
 - d. Cast in place concrete or precast concrete panels, except for single and two-family residential uses.
 - e. Wood, provided the surfaces are finished for exterior use and wood of proven exterior durability is used, such as cedar, redwood, cypress.
 - f. Curtain wall panels of steel, fiberglass and aluminum (nonstructural, no-load bearing), provided

such panels are factory fabricated and finished with a durable nonfade surface and their fasteners are of a corrosion resistant design, except for single and two-family residential uses.

- g. Glass curtain wall panels, except for single and two-family residential uses.
- h. Stucco.
- i. Horizontal vinyl and steel.
- j. Other materials as approved by the City Commission and maintained by the City Building Official.

Source: Ord. 675, Sec. 2 (2003); Ord. 916, Sec. 43 (2012).

4-442. ACCESSORY BUILDING AND USE PROVISIONS. Accessory buildings and uses, except as otherwise permitted in this Ordinance, shall be subject to the following regulations:

- 1. An accessory building or use which is structurally attached to a main building, shall be subject to, and must conform to, all regulations of this Ordinance applicable to the main building.
- 2. No detached accessory building or use in any residential district shall exceed one story or 15 feet in height.
- 3. No detached accessory building or use shall be erected in any required yard, except a rear yard, nor shall it be located closer than three (3) feet to any side or rear lot line, subject to the following exceptions:
 - a. Where the rear lot line is coterminous with any alley right-of-way, the accessory building or use shall not be closer than one (1) foot to such a rear lot line except when a garage is entered from an alley at right angles, it shall not be nearer than ten (10) feet to the rear lot line.
 - b. On corner lots, an accessory building or use, including driveways on the street side, shall maintain the same side yard setback required for the main building, except for garages accessing a public street, which shall maintain a setback of 18 feet for lots of 50 feet or less and 20 feet for lots greater in width than 50 feet.
 - c. In no instance shall an accessory building or use be located within a dedicated easement right-of-way.

- d. On through lots or double frontage lots where one of the front yards is intended to serve as the rear yard and is consistent with the other lots on the block, detached accessory buildings may be erected within twelve (12) feet of the intended rear lot line and three (3) feet of the side lot line.
 - e. Accessory buildings for townhouses may be constructed up to the interior lot line following the principal building scheme.
- 4. No accessory building shall be constructed upon a lot until the construction of the main building has been actually commenced.
- 5. No accessory building in a residential district shall exceed 1,000 square feet, except in the Rural Residential District where accessory buildings up to 1,600 square feet are allowed. Accessory buildings greater than 1,000 square feet in the Rural Estate District and 1,600 square feet in the Rural Residential District are allowed as a conditional use.
- 6. All swimming pools as defined by this ordinance shall be regulated as follows:
 - a. A permit shall be required for all swimming pools with a capacity of five thousand (5,000) gallons and/or two feet (2') or more of depth. Each application for a permit to construct or erect a swimming pool shall be accompanied by plans of sufficient detail to show:
 - (1) The proposed location and its relationship to the other principal buildings on the lot.
 - (2) The size of the pool.
 - (3) Fencing and other fixtures existing on the lot, including utility location and trees.
 - (4) The location, size and types of equipment to be used in connection with the pool, including but not limited to filter unit, pump, fencing and the pool itself.
 - (5) That the requirements contained in subsection b below will be satisfied.
 - b. All below ground pools for which a permit is required and granted shall be provided with safeguards to prevent children from gaining uncontrolled access. This can be accomplished with

fencing, screening or other enclosure, or any combination thereof of sufficient density as to curtail access. If fences are employed, they shall be at least six feet (6') in height. Fences shall be of a noncorrosive material and shall be constructed so as to be not easily climbable. All fencing openings or points of entry into the pool enclosure shall be equipped with gates or doors. All gates or doors to swimming pools shall be equipped with self-closing and self-latching devices placed at a sufficient height so as to be inaccessible to all small children. All fence posts shall be decay or corrosion resistant and shall be set in concrete bases or other suitable protection. The opening between the bottom of the fence and the ground or other surfaces shall not be more than four inches (4").

- c. All above ground pools shall be provided with safeguards to prevent children from gaining uncontrolled access.

Source: Ord. 501, Sec. 11 (1996); Ord. 916, Sec. 44, (2012).

4-443.

A. Exceptions to Yard and Height Requirements.

Yard Encroachments: Every part of a yard or court shall be open and unobstructed by any building or structure, from its lowest point upward, except as follows:

- (1) Accessory structures, as governed by Section 4-442 are permitted in rear yards.
- (2) Awnings, balconies, sills, cornices, buttresses, and eaves may project not more than five (5) feet over or half the distance of the required side yard, whichever is less.
- (3) Walks, steps for negotiating ground slopes, retaining walls, hedges and natural growth, fences, paved terraces and paved areas.
- (4) Structures used ornamentally or for gardening or for private recreation purposes, and structures for essential services, all accessory to and customarily incidental to the principal use, are permitted in yards and courts, provided that a side yard strip three (3) feet in width adjoining the side line of the lot shall be unobstructed by any structure or feature, except a fence or retaining wall.

- (5) Uncovered porches, uncovered steps to building entrances, uncovered patio decks and uncovered balconies may extend up to ten (10) feet into any required front or rear yard and up to three (3) feet into any required side yard.
- (6) Open work fire balconies, fire escapes, and fire escape windows may extend not more than three (3) feet into a required yard or court, except that a minimum setback of three feet (3') to any side lot line must be maintained.
- (7) Chimneys and flues may extend not more than two (2) feet into a required yard or court.

Source: Ord. 1049, Sec. 28 (2015)

- B. Exceptions to Height Regulations: The height limitations contained in the district regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, solar energy collectors and equipment used for the mounting or operation of such collectors, or other appurtenances usually required to be placed above roof level and not intended for human occupancy. Although exempted from structural height limitations, these structures should not significantly impair solar access of buildings or solar collector locations.
- C. Exception to Front Yard Depth Standard: In areas previously approved as Planned Unit Development Districts and currently governed by R-1A through R-3 zoning district regulations, a special front yard depth may be established in accordance with the following standards:
 - (1) Where the majority of lots on the same side of the street between two intersecting streets are developed with buildings, and (a) these buildings are set back from the front yard line less than is required under current zoning ordinances, or (b) there is an existing driveway which establishes a clear intention that an addition or garage to the existing building was intended to be constructed with less than the currently required front yard setback, then the Building Inspector may waive the required front yard depth and substitute a special front yard depth which keeps with the existing and prevailing pattern of lot development. Under no circumstances shall this special front yard depth be less than 20'. Those developments which have gained substandard front yard depths through the granting of Zoning Ordinance variances shall not be

used in determining the prevailing front yard setback pattern along any specified block.

4-444. ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT. In any district, more than one structure housing a permitted or permissible principal use may be erected on a single lot, provided that yard and other requirements of this Ordinance shall be met for each structure as though it were on an individual lot.

4-445. STRUCTURES TO HAVE ACCESS. Every building hereafter erected or moved shall be on a lot adjacent to a public street, or with access to an approved private street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

4-446. CURRENTLY LICENSED MOTORIZED VEHICLE AND EQUIPMENT PARKING IN RESIDENTIAL DISTRICTS.

A. Purpose: To prohibit the parking or storage of certain vehicles and equipment and prevent the extended storage of those vehicles and equipment which (due to general factors of nuisance) affects the well functioning and character of a residential neighborhood and the community.

B. For the purposes of this ordinance, the following definitions apply:

1. Currently Licensed Motorized vehicle or Equipment. Any motorized vehicle or equipment which is licensed and operable for the current year in which it is inspected by the City. This includes passenger vehicles with a cargo capacity rating of one ton or less and recreational equipment.
2. Improved Parking Surface. Shall consist of a durable surface to include concrete or bituminous, or gravel only where the existing driveway has not been improved to concrete or asphalt. Grass or dirt shall not constitute a durable surface.
3. Residential Districts. Shall include the zoning districts specified as R-1E, R-L1A, R-1A; R-1B; R-1; R-1S; R-1SM; R-2; R-3; and R-5.
4. Summer Parking/Storage. Shall include the period between April 15th to October 15th.
5. Winter Parking/Storage - Shall include the period between October 15th to April 15th.

C. Currently licensed vehicle or equipment parking on residential lots may be parked in the following-described areas:

1. Garage/Carport. Parking or storage may occur entirely within a garage or carport.
2. Required Rear Yard. Parking or storage may occur on an improved parking surface within the required rear yard provided that a 3' setback be maintained for rear or side lot lines. This requirement may be waived where written agreement authorizing this waiver is made between the subject property and those neighbors whose property physically touch the subject property. This agreement shall thereupon be presented to the City Planner for recording. The 3' setback requirement may also be waived should a 6' privacy fence or equivalent landscaped screened area exist between vehicle/equipment parking and the lot line.
3. Required Side Yard. Parking or storage may occur on an improved parking surface within the required side yard provided that a 12-foot setback is maintained on the street side of a corner lot and a 3-foot setback is maintained from the side lot line on interior lot lines. This requirement may be waived along interior lot lines where written agreement authorizing this waiver is made between abutting neighbors to either side of the subject property and thereupon presented to the City Planner for recording. This requirement may also be waived should a 6' privacy fence or equivalent landscaped screened area exist between vehicle/equipment parking and the required side yard lot line.

Vehicles or equipment over 25' in length shall be parked behind the nearest portion of a building to the street unless written authorization is given by the neighbors in accordance with the process as described above. Should this authorization be given and recorded, these vehicles and equipment may extend no more than 25' past the nearest portion of a building to a street and be parked on an improved parking surface. However, under no circumstance shall vehicle or equipment parking occur within 3' of the sidewalk or, where no sidewalk exists, 1' from the front lot line. For vehicles and equipment over 25' in length, summer parking/storage shall occur for a time not to exceed a total of 11 days in any 14 day period. Winter parking for these vehicles and equipment shall occur for a time not to exceed 72 hours in any seven (7) day period.

4. Required Front Yard. Currently licensed vehicles and equipment 25' or under in length may be parked during any period on an improved parking surface. For vehicles and equipment over 25' in length, summer parking/storage shall occur on an improved parking surface for a time not to exceed a total of 11 days in any fourteen (14) day period. For vehicle and equipment over 25' in length, winter parking/storage shall occur on an improved parking surface and for a time not to exceed 72 hours in any seven (7) day period. All vehicles and equipment shall maintain a 3' setback from the sidewalk or, where no sidewalk exists, a 1' setback from the front property line. Under no circumstances shall vehicle or equipment parking block the public right-of-way.
5. No such vehicle or equipment shall be used for living, sleeping or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.

SOURCE: Ord. 458, Sec. 15 (2005); Ord. 916, Sec. 45 (2012)

4-447. PARKING AND/OR STORAGE OF CERTAIN VEHICLES, EQUIPMENT AND MATERIALS.

1. Residential Districts. Automotive vehicles without current license plates shall not be parked or stored on any residentially zoned property other than in completely enclosed buildings. Small trailers which are twenty (20) feet or less in length, including the hitch, are allowed to be parked on a residentially zoned property, provided the trailer is parked on an interior side yard (not street side) and parked on an improved parking surface. Automotive vehicles with a cargo capacity rating of one ton or more, and storage of equipment used for construction, landscape services, snow removal services, and other commercial or agricultural equipment and trailers shall not be stored on any residential zoned property or on any street within a residentially zoned district, provided however that vehicles with a cargo capacity of one ton or more, snow removal equipment and agricultural equipment and trailers may be stored on property zoned "R-R": Rural Residential District. These provisions are not intended to prohibit vehicles and equipment engaged in contractual services for improvements to a given property. Recreational vehicles, recreational equipment and recreational trailers may not be parked on any street within a residentially zoned district for a period exceeding seventy-two (72) hours. No lot in any residential district shall be used for the outdoor storage, keeping, or abandonment of junk,

including scrap metals, or other scrap materials or goods, or used for the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.

Source: Ord. 916, Sec. 46 (2012)

2. Commercial and Industrial Districts. Outside storage of equipment, materials and inventory as part of a principal commercial or industrial use shall be subject to the district use provisions. All outside storage shall conform to the following provisions:
 - a. The area occupied is not within a required front or required street side yard, except for vehicle and equipment sales display areas.
 - b. Unless otherwise approved as a conditional use, the storage area with all equipment, materials, and inventory is completely screened from the motoring public by fence or landscaping as provided for in Section 4-449.A.
 - c. Display and storage areas generally shall be improved to allow for good drainage, dust control and provide for neat appearance. Grassed areas may be utilized if there is good drainage, dust can be controlled and the grassed surface can be maintained for neat appearance.
 - d. The storage area does not encroach upon required parking space, required loading space, or snow storage area for the use.
 - e. Storage boxes, crates or other units utilized for the purpose of storage and protecting materials from the weather are considered outdoor storage. Such units are allowed in Commercial areas, except within the "CO" District or Corridor Overlay District, provided they do not exceed six (6) feet in height, are located in a side or rear yard, and are fully screened from view from any public street according to the screening provisions found in Section 4-441.3. In industrial areas, these storage units are not limited by height; however, must be located in a side or rear yard and be fully screened from any public street.
 - f. All new commercial and industrial uses shall comply with the above procedures and standards. For the purposes of public health, safety and aesthetic appeal to the community, any outside storage existing upon the effective date of this Section,

shall be brought into compliance within twelve (12) months of written notification by certified mail to the property owner.

Source: Ord. 748, Sec. 16 (2005); Ord. 1049, Sec. 29 (2015)

4-448. PROVISIONS OF HOME OCCUPATIONS. Home occupations, as defined by this Ordinance, shall be subject to the following standards:

1. No person other than members of the family residing on the premises shall be engaged in such occupations.
2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five (25) percent of the main floor area of the dwelling unit shall be permanently set aside to be used in the conduct of the home occupation.
3. There shall be no change to the outside appearance of the premises that would reflect the presence of a home occupation other than one sign, not to exceed one square foot, non-illuminated, and mounted flat against the wall of the principal building.
4. No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance detectable to the normal senses off the lot or in a neighboring dwelling unit. In the case of electrical interference, no equipment shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
5. For uses within the dwelling unit, the entrance to the space devoted to such occupation shall be within the dwelling unit, or designed such that it is not noticeable from the public street.
6. All parking associated with the principal use and the home occupation shall be accommodated on site. Parking spaces exceeding the required spaces for the principal use shall be included within the lot coverage for the property. The lot coverage for the property cannot exceed that allowed by the district in which the use is located.
7. The home occupation must be conducted entirely within a building.
8. There shall be no exterior storage of equipment or materials used in the occupation.

9. Certain types of uses are not viewed as customary home occupations and are therefore prohibited within residential zoning districts. Such prohibited uses include the following:
 - a. Vehicle and large equipment repair, including any type of repair or assembly of vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chainsaws, and other small engines) or of large appliances (such as washing machines, dryers, and refrigerators) or any other work related to automobiles and their parts. Such uses may be considered as a conditional use in the Rural Residential District.
 - b. Dispatch centers where employees come to the site to be dispatched to other locations.
 - c. Mortuaries.
 - d. Animal care or boarding facilities including kennels, stables and all other types of animal boarding and care facilities. Such uses may be considered as a conditional use within the Rural Estate and Rural Residential District.
10. As a conditional use, the City may consider a home occupation use adding one nonresident employee, or may consider uses which have customers coming to the site. Any home occupation in existence prior to the adoption of this ordinance which would require a conditional use permit to operate, shall be required to obtain a conditional use permit once the City has received a complaint. The City may place any conditions on the home occupation as deemed necessary to insure that it will not be a detriment to the character and livability of the surrounding neighborhood.
11. Any home occupation in existence prior to the adoption of this ordinance which would not be allowed by this ordinance must either comply with the provisions of this ordinance or cease to operate on the premises within a period of twenty-four (24) months of written notification by certified mail.

Source: Ord. 748, Sec. 17 (2005)

4-449. WIRELESS TELECOMMUNICATIONS.

1. Purpose. In order to accommodate the communication needs of residents and businesses while protecting the public health, safety, and general welfare of the community,

these regulations are necessary to facilitate provision of wireless telecommunications services to the residents and businesses of the City, minimize adverse visual effects of towers through careful design and siting standards, avoid potential damage to adjacent properties from structural failure through structural standards and setback requirements, and maximize the use of existing and approved structures and buildings to accommodate new wireless telecommunication antennas in order to reduce the number of towers needed to serve the community.

2. Definition.

- a. ANTENNA. Any structure or device used for the purpose of collecting or transmitting electromagnetic waves, including but not limited to directional antennas, such as panels, microwave dishes, and satellite dishes, and omni-directional antennas, such as whip antennas.
- b. COMMERCIAL WIRELESS TELECOMMUNICATION SERVICES. Licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.
- c. TOWER. Any ground or roof-mounted pole, spire, structure, or combination thereof taller than 15 feet, including supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna, meteorological device, or similar apparatus above grade.

3. Towers in Residential and Other Zoning Districts.

- a. Towers supporting amateur radio antennas and conforming to all applicable provisions of this ordinance are allowed only in the rear yard of residentially zoned property.
- b. Towers supporting commercial antennas and conforming to all applicable provisions of this ordinance are allowed only upon the following residential zoned property:
 - (1) Tower sites, subject to review and approval by the City Commission.
 - (2) Church sites, when camouflaged as steeples, bell towers, or other architecturally

compatible structures; subject to review and approval as conditional uses.

(3) Park sites, when compatible with the nature or the park and subject to review and approval as conditional uses.

(4) Government, school, and utility sites, subject to review and approval as conditional uses.

c. Towers supporting commercial antennas and conforming to all applicable provisions of this ordinance are allowed within the Agricultural, Light Commercial,, and Heavy Commercial/Light Industrial Districts, subject to review and approval as conditional uses.

d. Towers supporting commercial antennas and conforming to all applicable provisions of this ordinance are allowed within the Heavy Industrial District as a permitted use, provided the property does not abut an Agricultural, Light Commercial, or any Residential District. Otherwise, these towers would be considered conditional uses.

4. Co-Location Requirement. All commercial wireless telecommunication towers erected, constructed, or located within the City must comply with the following requirements:

a. A proposal for a new commercial wireless telecommunications tower must not be approved unless the applicant proves that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a reasonable search radius of the proposed tower due to one or more of the following reasons:

(1) The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified professional engineer, and the existing or approved tower cannot be reinforced or modified to accommodate planned or equivalent equipment at a reasonable cost.

(2) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified professional engineer and the interference cannot be prevented as a reasonable cost.

- (3) Existing or approved towers and building within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified professional engineer.
 - (4) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.
 - b. Any proposed commercial telecommunications tower must be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least one additional user.
- 5. Tower Construction Requirements. All towers erected or constructed must be designed by a registered engineer.
- 6. Tower and Antenna Design Requirements. Proposed or modified towers and antennas must meet the following design requirements:
 - a. Towers and antennas must be designed to blend into the surrounding environment through the use of color, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration.
 - b. Commercial wireless telecommunication towers must be a monopole design unless the City Commission determines that an alternative design would better blend into the surrounding environment or the applicant provides evidence to the City that an alternative design is necessary to successfully engage in commercial telecommunication services.
- 7. Tower Setbacks. Towers must conform with each of the following minimum setback requirements:
 - a. Towers must meet the setbacks of the underlying zoning district and may not encroach upon any easement.
 - b. Towers must be set back from the public right-of-way a minimum distance equal to one half of the height of the tower including all antennas and attachments.
 - c. Towers may not be located between a principal structure and a public street within a front or side yard, with the following exceptions:

- (1) In Industrial Zoning Districts, towers may be placed within a side yard abutting a public street, provided that the street is not along the perimeter of the district.
 - (2) On sites adjacent to public streets on all sides, towers may be placed within a side yard abutting a local street.
- d. A tower's setback may be reduced or its location in relation to a public street adjusted, at the sole discretion of the City Commission, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device, or similar structure or if the applicant provides evidence that a setback reduction is necessary to successfully engage in commercial telecommunication services.

8. Tower Height. All proposed towers must meet the following height limitations:

- a. The height of towers will be determined by measuring the vertical distance from the tower's center point of contact with the ground or rooftop to the highest point of the tower, including all antennas or other attachments. When towers are mounted upon other structures, the combined height of the structure and the tower must meet the height restrictions.
- b. Towers must conform to the following height restrictions:
 - (1) In all residential zoning districts, the maximum height of any tower, including antennas and other attachments, will be the maximum height restriction for primary structures within that zoning district, unless otherwise provided for in Section 4-449.3(b).
 - (2) In all non-residential zoning districts, the maximum height of any tower, including all antennas and other attachments, must not exceed one foot for each two feet the tower is set back from a residential zoning district or a maximum height of 150 feet, whichever is less, unless the applicant provides evidence to the City that the proposed tower height is technically necessary to successfully engage in commercial telecommunication services.

- (3) All towers must meet these maximum height restrictions of this section, unless located upon public buildings and utility structures, church sanctuaries, steeples and bell towers.
9. Tower Lighting. Towers must not be illuminated by artificial means and not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a particular tower. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.
10. Signs and Advertising. The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.
11. Screening. All towers and structures accessory to the tower must be screened in accordance with Section 4-449.A of this ordinance.

Source: Ord. 1049, Sec. 30 (2015)

12. Abandoned or Unused Towers or Portions of Towers. All abandoned or unused towers and associated facilities must be removed within 12 months of the cessation of operations at the site unless a time extension is approved by the City Commission. In the event that a tower is not removed within 12 months of the cessation of operations at a site, the tower and associated facilities may be removed by the City and the costs of removal assessed against the property.
13. Antennas Mounted on Roofs, Walls, and Existing Towers. The placement of commercial wireless telecommunication antennas on roofs, walls, and existing towers may be approved by resolution of the City Commission without a public hearing, provided the antennas meet the requirements of this ordinance. Requests under this section must be accompanied by a final site plan and building plan and a report prepared by a qualified professional engineer indicating the existing structure or tower's suitability to accept the antenna, and the proposed method for affixing the antenna to the structure. Complete details of all fixtures and couplings, and the precise point of attachment must be indicated. Completed information shall be provided to the City, which will then be placed on the City Commission agenda. Applicants will be informed of incomplete applications within thirty (30) days. The City Commission may require additional information when considering an application.

Private wireless telecommunications antennas, such as satellite dishes and other similar antennas, are permitted accessory uses in all residential districts to a maximum height of 15 feet and may not be located in a required front or side yard setback; except for private wireless telecommunications antennas less than 30 inches in diameter which may be located within a required front or side yard setback if mounted upon a residential structure.

Source: Ord, 916, Sec. 47 (2012)

14. Interference with Public Safety Telecommunications. No new or existing telecommunications service may interfere with public safety telecommunications. Before the introduction of new service or changes in frequencies or maximum signal output, telecommunication providers must notify the City at least ten (10) calendar days in advance of such changes and allow the City to monitor interference levels during the testing process.
15. Towers and Antennas Upon Public Right-of-Way and Public Property. With the exception of the necessary electric and telephone service and connection lines approved by the City, no part of any antenna or tower nor any lines, cable, equipment, or wires or braces in connection with either may at any time extend across or over any part of the public right-of-way, public street, highway, sidewalk, or property line without a lease approved by the City of West Fargo in accordance with the City's "Policy Statement Regarding Wireless Telecommunication Antennas and Towers."
16. Additional Submittal Requirements.
 - a. In addition to the information required elsewhere in this ordinance, development applications for towers must include the following supplemental information:
 - (1) Descriptions of the tower height and design, including a cross-section and elevation.
 - (2) Documentation of the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas.
 - (3) Descriptions of the tower's capacity, including the number and type of antennas that can be accommodated.
 - (4) Documentation regarding what steps the applicant will take to avoid interference with established public safety telecommunications.
 - (5) Other information necessary to evaluate the request.

- b. For all commercial wireless telecommunication service towers, a letter of intent committing the tower owner and his or her successor to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.
- c. Before the issuance of a conditional use permit, the following supplemental information must be submitted:
 - (1) Proof that the proposed tower complies with regulations administered by Federal Aviation Administration; and
 - (2) A report from a qualified professional engineer with demonstrates the tower's compliance with the aforementioned structural and electrical standards.

Source: Ord. 530, Sec. 7 (1997).

4-449-A. LANDSCAPING STANDARD.

1. Purpose: The preservation of existing trees and vegetation, as well as the planting of new trees and vegetation, can significantly add to the quality of the physical environment of the community. The regulations outlined herein are designed to provide for the health, safety and welfare of the residents of the City of West Fargo. Landscaping Plan can provide the following benefits to the community:
 - a. Help reduce the cities impact on the environment.
 - b. Enhances green space within the city.
 - c. Helps provide shade and wind breaks to reduce extreme weather.
 - d. Reduces the hazards of flooding and aid in the control of erosion and storm water runoff. Trees can help in the stabilization of soil and replenish groundwater supplies.
 - e. Provides buffers and screens against noise, air pollution, and unsightly and incompatible land uses.
 - f. Absorb carbon dioxide and supply oxygen in our atmosphere, which is an essential ecological function in the preservation of human and animal

life. Trees can provide a haven for birds which, in turn, assist in the control of insects.

g. Help aid in energy conservation.

2. Definitions: The following definitions are intended to provide a common interpretation of terms in order to avoid confusion and insure that the Standards are utilized in a uniform manner.

AESTHETICALLY PLEASING: in a pleasing manner or beautiful, indicated when someone does not necessarily have an interest or bias towards something but can still accept that it is still acceptable to look at.

APPROVED PLANT LIST: A list of plants that is approved by the City Forester and the City of West Fargo to plant within the city limits.

BACKFILL: Soil that is returned to a planting hole after a plant's roots have been positioned.

BERMS: Graded mounds of earth used to create a screen, buffer or a landscape design element.

BIOSWALE: Are landscape elements designed to remove silt and pollution from surface runoff water. They consist of a swale drainage course with gently sloped sides (less than six percent) and filled with vegetation, compost and/or riprap. Water flows throw this path, along with the wide and shallow ditch, while doing so the bioswale is designed to maximize the time water spends in the swale, which aids the trapping and filtering of pollutants and silt.

BUFFER YARD: Landscaping that is used to obstruct the view of an adjacent property.

BOULEVARD: An area located in front of a property facing a city street or public right of way.

CALIPER: A way of measurement for trees around the trunk of the tree, in other words by, measuring the outer circumference or perimeter of a tree trunk.

CITY FORESTER: Forester an employee of the city and is responsible for the promotion of the health and sustainability of the urban forest within the municipal limits of the City of West Fargo and providing public education as to the benefits and best use of the urban forest and the maintenance or such forest.

DECIDUOUS SHADE TREE: A tree that sheds all its leaves every year at a certain season.

DECORATIVE BLOCK: Generally refers to non-standard, masonry, building block. The face of the block is typically textured and contains a non-standard finish or shape.

DRIPLINE: is the area directly located under the outer circumference of the tree's branches.

DROUGHT-TOLERANT PLANT: A plant that can survive with minimum supplemental water.

EVERGREEN TREE: A tree, either broad leaf or conifer, which maintains at least a portion of its leaves or needles throughout the year.

FIFTEEN (15) GALLON TREE: Tree measuring a minimum of six (6) feet in height, four (4) feet in spread and one and one-quarter (1 1/4) inch trunk caliper measured at six (6) inches above the soil line.

FINISHED ELEVATION: The elevation/grade which re-establishes the finished grade after all site improvements are completed.

GARDEN PLANTS: The practice of growing plants. Ornamental plants are normally grown for their overall appearance such as flowers, or plants that are grown for consumption (such as but not limited to: vegetables, fruits, herbs, and leaf vegetables) or for medicinal use, which eventually die after one growing season.

GROUND COVER: Plants grown for their low spreading capabilities for the protection of soils, to prevent growth of weeds and for aesthetic purposes.

HATRACKING: is a type of pruning where most of the canopy is removed from a tree, leaving mostly branch stubs. Hatracking initiates decay in the trunk and main branches and attracts wood boring insects. Never top a tree or allow anyone to top one of your trees. Hatracking is equivalent to butchering a tree.

HARDSCAPE: Elements of the landscape constructed from non-living materials such as concrete, boulders, brick, blacktop and lumber.

IRRIGATION SYSTEM: The combination of elements such as automatic controllers, meter, pressure vacuum breakers, pipes, valves, emitters, bubblers, spray heads, tubing

and other materials designed for the purpose of transporting water to landscaping.

LANDSCAPING: The combination of elements such as trees, shrubs, ground covers, vines, and other organic material that are for the express purpose of creating an attractive and pleasing environment. Plazas, patios, art, and decorative courtyards may also be considered landscape elements.

MEANDERING SIDEWALK: A sidewalk with windings or turns in a circuitous pattern.

NATIVE PLANTS: Plants that are naturally meant to be in this area.

NON-POROUS MATERIALS: A material that does not allow the movement of water and air to pass through it.

OVERHEAD SPRAY HEADS: An irrigation method that delivers water to the landscape in a spray or stream-like manner from above-ground spray heads (including pop-ups, impulse sprinklers, rotors, micro-misters, etc., but does not include bubblers).

PERENNIAL: A non-woody plant that lasts for more than two growing seasons.

POROUS/PERMEABLE MATERIAL: A material that does allow the movement of water and air to pass through it.

PUBLIC RIGHT OF WAY (ROW): The strip of land over which facilities such as highways, railroads, or power lines are built. The customary or legal right of a person, vessel, or vehicle to pass in front of another.

RIP-RAP: Hardscape materials that provide erosion protection along a drainage way (i.e. large boulders).

ROCK MULCH: A non-soluble protective covering which includes rock, gravel, decomposed granite, or crushed rock applied to the soil surface to reduce weed growth, reduce evaporation of moisture from the soil surface, maintain even temperature around plant roots, and slow erosion.

RUNOFF: Irrigation water that is not absorbed by the soil to which it is applied and which flows onto other areas. Runoff may result from water that is applied at too great a rate (application rate exceeds infiltration rate) or where a severe slope exists.

SOIL: All unconsolidated mineral and organic material of whatever origin that overlies bedrock and can be readily excavated.

SOIL AMENDMENTS: Organic and inorganic material added to soils to improve texture, nutrients, moisture holding capacity, and infiltration rates.

STEM WALL: A wall usually less than two (2) feet in height, used to divert or direct storm water flows within an area specified by the Department of Public Works.

SWALES: A depression in grade to control and direct the flow of surface water.

TOPSOIL: The top layer of native soil that is usually better for plant growth than what is beneath it. The term is also used to describe good soil imported for landscaping.

TURF: Any grassy area maintained by frequent mowing, fertilization and watering used for lawn and playing fields.

TWENTY-FOUR (24) INCH BOX TREES: Trees measuring a minimum of eight (8) feet in height, and six (6) feet in spread with a two (2) inch trunk caliper measured at six (6) inches above the soil line.

XERISCAPING: Xeriscaping is a creative method of landscaping that emphasizes water conservation. This is accomplished by following sound horticultural and landscaping practices, such as planning and design, soil improvements, limited turf areas, use of mulches, use of low water demand plants, efficient irrigation, and appropriate maintenance. When combined, these practices will produce an attractive, efficient, sustainable landscaping arrangement for residential, commercial and industrial situations.

3. General Goals and Objectives for Landscape Standards:

- a. Clearly define spaces, articulate use areas, and unify site elements through use of landscape materials:
 - (1) Create a distinction of natural planting areas and implemented landscaping.
 - (2) Use consistent site features such as signs and benches.

- b. Provide clear wayfinding as appropriate for facilities and properties:
 - (1) Create a strong entry.
 - (2) Provide clear direction to primary building entries.
 - (3) Enhance circulation corridors with trees and plant materials.
- c. Support a safe and clear circulation system(s):
 - (1) Provide appropriate sidewalk and roadway width as described in the Site Design Standards.
 - (2) Improve visibility, safety, and aesthetics as appropriate for facilities.
- d. Use sustainable landscaping practices:
 - (1) Limit and control erosion throughout site.
 - (2) Minimize use of non-sustainable fertilizers, herbicides, and pesticides
 - (3) Use plant material to reduce adverse climatic conditions such as heat, wind, and precipitation.
 - (4) Guide future development toward sustainable and environmentally sound design through use of native and locally available plant material, reclaimed water irrigation, and other practices.
 - (5) Feature native plant material.
 - (6) Reinforce a natural context of the site by simulation a natural type of planting.
 - (7) Consider xeriscaping approaches where natural, low maintenance plant material would be desired (i.e. exterior fringes of plant site).

- 4. Applicability: The requirements of this division apply to all development within the City. All street boulevards are required to have boulevard trees unless the City Forester deems otherwise. Single family, twin home and two family residential and industrial properties are not required to meet proposed plant units for each lot,

though they are encouraged to do so; however, all multiple family properties, commercial properties and properties within any overlay district are required to adhere to the plant unit chart standards. All properties which require green areas (grassed) or landscaped open space, shall have the appropriate landscaping completed prior to the issuance of a certificate of occupancy. A temporary certificate of occupancy may be issued when weather and/or seasonal conditions do not allow the installation of landscaping with a schedule for completion as may be approved by the City Planner.

Source: Ord. 1049, Sec. 31 (2015)

5. Plant Standards:

A. General Standards:

- (1) Acceptable trees include, but are not limited to; those identified as suitable for the intended use in the "Approved Plant List." Acceptable vegetative ground cover consists of shrubs and ground cover including grass and native prairie grass.
- (2) Species of trees shall not be planted if the roots cause damage to public works, the branches are subject to a high incidence of breakage, and the fruit is considered a nuisance or high maintenance, as determined by the City Forester.
- (3) All trees shall be planted in good condition. All plant materials to be installed shall be nursery grown and root pruned stock free of insects, disease, and defects.
- (4) The developer shall plant, or install, as appropriate grass, tree grates, porous pavers, or similar pervious surfaces, which shall extend to twice the initial drip line of the newly planted tree. Minimum tree grate size shall be five square feet.

B. Approved Plant List: The City shall maintain a Plant List identifying plants compatible with local soils and climatic conditions including salt tolerance, sun and heat exposure, and mean low temperature. All required landscape plants must be selected from the Plant List. Plant material shall be selected that is best suited to withstand the soil and physical growing conditions on the project site. Plant species that are freeze and drought

tolerant are preferred. Protection and preservation of native species and natural areas is encouraged.

6. Landscaping Material:

A. Where landscaping and associated landscape plans are required, the landscaping materials shall consist of the following:

(1) Walls and Fences: Walls shall be constructed of natural stone, brick or other appropriate aesthetically pleasing decorative materials. Chain link fencing will be permitted only if covered with plant material or otherwise screened.

a. Retaining: Retaining walls exceeding four (4) feet in height, including stage walls which cumulatively exceed four (4) feet in height, must be constructed in accordance with plans prepared by a registered engineer or landscape architect of brick, concrete or natural stone. Artificial material may be approved if appropriate. A building permit is required.

Source: Ord. 1049, Sec. 32 (2015)

(2) Earth Berms: Earth berms shall be physical barriers, which block or screen the view similar to a hedge, fence, or wall. Mounds shall be constructed with proper and adequate plant material to prevent erosion. A difference in elevation between areas requiring screening does not constitute an existing earth mound, and shall not be considered as fulfilling any screening requirement.

(3) Plants: All plant materials shall be living plants; artificial plants are prohibited. Plants to be selected from the approved plants list, following this division or as approved by City Forester. Plant materials shall meet the following requirements:

(a) Deciduous Trees: Shall be species having an average crown spread of greater than fifteen (15) feet and having trunk(s) which can be maintained with over five (5) feet of clear wood in areas which

have visibility requirements, except at vehicular use area intersections where an eight-foot clear wood requirement will control. Trees having an average mature spread of crown less than fifteen (15) feet may be substituted by grouping of the same so as to create the equivalent of a fifteen-foot crown spread. A minimum of ten (10) feet overall height or minimum caliper (trunk diameter, measured six (6) inches above ground for trees up to four (4) inches caliper) of at least two and one-half (2 ½) inches immediately after planting shall be required. Trees of species whose roots are known to cause damage to public roadways or other public works shall not be placed closer than fifteen (15) feet to such public works, unless the tree root system is completely contained within a barrier for which the minimum interior containing dimensions shall be five (5) feet square and five (5) feet deep and for which the construction requirements shall be four (4) inches thick, reinforced concrete.

- (b) **Evergreen Trees:** Evergreen trees shall be a minimum of six (6) feet high with a minimum caliper of one and one-half (1 ½) inches when planted.
- (c) **Shrubs and Hedges:** Deciduous shrubs shall be at least two (2) feet in average height when planted, and shall conform to the opacity and other requirements within four (4) years after planting. Evergreen shrubs shall be at least two (2) feet in average height and two (2) feet in diameter.
- (d) **Vines:** Vines shall be at least twelve (12) inches high at planting, and are generally used in conjunction with walls or fences.
- (e) **Grass or Ground Cover:** Grass shall be planted in species normally grown as permanent lawns, and may be sodded, plugged, sprigged, or seeded; except in swales or other areas subject to erosion, where solid sod, erosion reducing net, or

suitable mulch shall be used, nurse-grass seed shall be sown for immediate protection until complete coverage otherwise is achieved. Grass sod shall be clean and free of weeds and noxious pests or diseases. Ground cover such as organic material shall be planted in such a manner as to present a finished appearance and seventy-five (75) percent of complete coverage after two (2) complete growing seasons, with a minimum of fifteen (15) inches on center. In certain cases, ground cover also may consist of rocks, pebbles, sand and similar materials if approved by the city.

7. Material Specifications:

- A. Minimum Number of Trees Required: A property owner should have a variety of trees on their property. This will allow the trees to be less prone to disease and have a healthy life. It is suggested that as many different tree species be placed on the site as possible but a minimum number of a variety of tree species shall be provided in accordance with the following table:

Number of Trees	Number of Species
1 - 3	1
4 - 6	2
7 - 9	3
10 - 12	4
13 - 15	5
16 - 18	6
19 - 21	7
22 - 24	8
25 +	9

- B. Plant Units: Residential and industrial districts are encouraged to follow the number of plant units for each lot as described below. All multiple family residential, commercial and overlay Zoning districts must have a minimum number of plant units on each lot. These standard plant units are (4) units for every thousand (1,000) square feet of a

lot. Only the plants on the owner's property will be counted towards required total plant units. Garden plants will not count toward the plant units. Below, is the equation of the plant units per square footage and the plant units chart:

$$\frac{(\text{Square Footage of Lot})}{1000} \times 4 = \text{Plant Units}$$

PLANT UNITS CHART		
Large, Mature Deciduous Tree	1.5 to 3-inch - > 30 foot mature height	10
Large, Mature Evergreen Tree	5 to 6 foot height - > 30 foot mature height	10
Small, Mature Deciduous Tree (Max. of 20% of plant units)	1.5 to 3-inch caliper - 12 to 30 foot mature height	7
Small, Mature Evergreen Tree (Max. of 20% of plant units)	3 to 4 foot height - 12 to 30 foot mature height	7
Mature Shrub	2 gallon	5
Perennial Plants	2 gallon	3

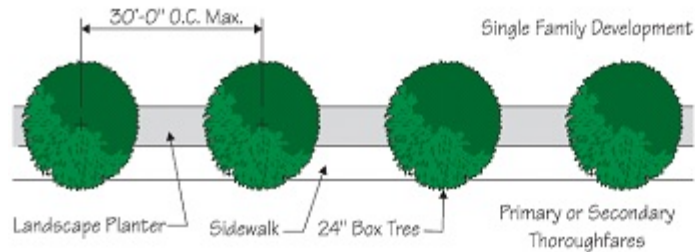
C. Onsite Retention: If an area where a wetland, bioswale, rain garden, or native prairie grass is designated for onsite retention, the square footage of that area will be excluded from the total lot area prior to calculation of plant units.

8. Boulevard and Street Vegetation:

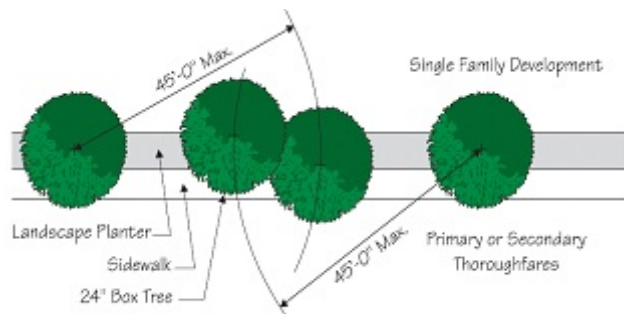
A. Tree Layouts: Tree layouts (plans) shall be coordinated with existing corridor planting plans, subdivision street landscape plans, and other established landscape plans to provide the desired effect as determined by this standard and the City Forester. It is required by the City to have at least one (1) tree on all street boulevards every thirty (30) feet, unless the City Forester determines otherwise. Trees shall be planted twelve (12) feet from driveways and alleyways. The spacing shall be at least twenty-five (25) feet from existing trees. On corner lots, the trees shall be planted forty (40) feet from the point of intersection of the curbs. The City Forester or City Planner shall have final approval of the

location of the tree and have the right to approve variances from the above requirements where conditions necessitate. Recommended tree layouts are as follows:

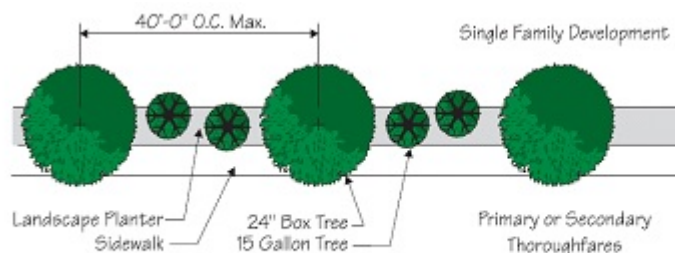
- (1) Alternative 1: Spacing of trees shall not exceed thirty (30) feet on center.



- (2) Alternative 2: Clustering of trees is allowed if: the total number of trees exceeds the minimum number of trees required by at least one (1) tree; the spacing between any two (2) trees does not exceed forty-five (45) feet; and at least three (3) trees are located within a forty five (45) feet radius.



- (3) Alternative 3: The minimum number of trees required is one (1) 24 inch box deciduous or evergreen tree for every forty (40) linear feet of planter plus one (1) extra 24 inch box tree. In addition, two (2) 15 gallon deciduous or evergreen trees shall be required for every forty (40) linear feet of planter, and will be located between the 24 inch box trees. The spacing of the 24 inch box trees shall not exceed forty (40) feet on center. The 15 gallon trees can be either regularly spaced or grouped in between the 24 inch trees.



- B. Size Requirements: No tree measuring less than 1 1/4" in diameter of trunk one foot above ground may be planted on the City Boulevard. The lowest branch shall not be over 9 ½ feet from the ground. The Tree must be a single stem trunk and have a straight vertical line.

9. Buffer Yards:

- A. Purpose: The purpose of buffer yards is to limit the view and reduce the noise between abutting incompatible uses, and to ease the transition from one zoning district to another. Buffer yards are intended to provide a physical integration of uses, which promote the public health, welfare and safety by:

- (1) Preventing visual pollution;
- (2) Preventing the overcrowding of land;
- (3) Preventing the undue congregation of people and vehicles; and
- (4) Promoting the peaceful enjoyment of property within the City of West Fargo.

- B. When Required:

- (1) A buffer yard shall be required of any lot in any zoning district when the lot in that district abuts a zoning district of lower intensity.
- (2) When a public right-of-way separates zones of different intensities, the following criteria shall apply, regardless of whether the zoning line is on one side or the other or the center of the public right-of-way:
 - (a) If the public right-of-way is an alley, a buffer yard with screening shall be provided.
 - (b) If the public right-of-way is a local or collector street, a buffer yard with screening shall be provided on any side or rear of the higher intensity use which abuts the right-of-way as per the table below, or according to approved subdivision landscaping plans or corridor

overlay district plans; however the buffer yard shall not be required on the front of the higher intensity use where the front abuts the public right-of-way.

- (c) If the public right-of-way is an arterial street or highway, no buffer yard or screening shall be required for the portion of the higher intensity use abutting the public right-of-way.
- (3) When single and two-family uses are located on Arterial streets and Interstate 94.
- (4) When a site plan is submitted to modify or expand an existing building or site improvements, or accommodate a change in land use, buffer yard and screening requirements shall only be applied to those portions of the site that are directly affected by the proposed improvements, or change in land use, as determined by the City Planner.

C. General Standards:

- (1) Buffer yards shall contain vegetative and/or architectural screening that achieves the purpose of the buffer yard, and which meets the requirements for screening, Buffer Yards Screening and Zoning Standards Table, below.
- (2) The maximum slope of any buffer yard shall be 2H: 1V where H is the horizontal distance and V is the vertical distance. Additional width shall be added to any portion of any buffer yard which exceeds this slope such that the minimum buffer yard width is met by land less steep than 2H: 1V.
- (3) The buffer yard shall be located entirely within the higher intensity zoning district and abutting the zoning district line or adjacent right-of-way if such right-of-way separates the lot from the zoning district line. However, the buffer yard may be placed in the lower intensity zoning district or partially within both zoning districts if both sides of the zoning district line and entire buffer yard width are within common ownership and a permanent easement is provided over any portion of the buffer yard not within the higher intensity zoning district.
- (4) A driveway required to serve the principal structure on the site may exist in the buffer

yard. This driveway shall run substantially perpendicular to the buffer yard.

- (5) Buffer yards shall be maintained in a natural condition free of structures, loading or storage areas, parking, roads, or driveways except as provided for in (4) above.
- (6) Buffer yards required by this standard shall be applied equally to all similarly situated properties. Modifications to these standards may be granted in writing by the City Planner, if the City Planner finds any of the following circumstances exist on the proposed building site, or surrounding properties:
 - (a) Natural land characteristics such as topography or existing vegetation on the proposed building site would achieve the same intent of this section.
 - (b) Innovative landscaping or architectural design is employed on the building site to achieve an equivalent screening or buffering effect.
 - (c) The required screening and landscaping would be ineffective at maturity due to the proposed topography of the site, and or the location of the improvements on the site.
 - (d) The topography of adjacent and surrounding sites is such as to render required screening ineffective at maturity.
- (7) When the acreage of a site is significantly larger than the area proposed for physical improvements or active usage, buffer yards shall be reserved as required by this section. However, to achieve the intent of this section, the City Planner may require an alternative location and design for required screening and plantings.
- (8) When property lines abut an adjacent jurisdiction, the City Planner shall determine the specific screening and buffering requirements along that property line after consideration of the zoning designation and or land use of the adjacent property. Requirements shall not exceed those that would be required for similarly situated/zoned property within the City.

- (9) Dimensions: Buffer yard dimensions and screening requirements shall be provided as detailed in the table below:

Buffer Yards, Screening, and Zoning Standards Table

BUFFER YARDS	ARCHITECTURAL	VEGETATIVE
A	4' Screen 10' Buffer Yard Small Evergreen Trees Alternated with Deciduous Trees	20' Buffer Yard Small Evergreen Trees, Alternated with Deciduous Trees, and One Row Evergreen or Other Shrubs
B	6' Screen 15' Buffer Yard Small Evergreen Trees Alternated with Deciduous Trees	30' Buffer Yard Small Evergreen Trees, Alternated with Deciduous Trees, and One Row of Evergreen or Other Shrubs
C	6' Screen 25' Buffer Yard Large and Small Evergreens Alternated with Deciduous Trees	50' Buffer Yard Large Evergreen Trees, Alternated with Deciduous Trees, Small Evergreen Trees, and One Row of Evergreen or Other Shrubs
D	8' Screen 30' Buffer Yard Large Deciduous Trees Alternated with Large Evergreen Trees	60' Buffer Yard Large Evergreen Trees, Alternated with Deciduous Trees, Small Evergreen Trees, and One Row of Evergreen or other Shrubs

Abutted Existing District					
Developers or Selected District	R1, R-1A, R-1B, R-1E, R-L1A, R-R	R-2, R-3, R-4, R-5	A	C, C-OP, CM, P	M
R1, R-1A, R-1B, R-1E, R-L1A, R-R	N/A	A	B	C	D
R-2, R-3, R-4, R-5	A	N/A	A	B	C
A	B	A	N/A	A	B
C, C-OP, CM, P	C	B	A	N/A	A
M	D	C	B	A	N/A

10. Screening:

A. When Required:

- (1) Screening shall be provided within a buffer yard to ease the transition of one land use or activity to another, to achieve the purposes of the buffer yard. Screening may be accomplished through architectural or vegetative materials.
- (2) Screening shall be provided, in addition to the requirements listed below, for:
 - (a) All articles or materials being stored, maintained, repaired, processed, erected, fabricated, dismantled, or salvaged, such that the activity is not visible from surrounding properties or roads.
 - (b) Refuse storage and loading areas such that these activities are not visible from surrounding properties or roads.
 - (c) Rooftop and ground level mechanical equipment such that it is not visible from surrounding properties or roads.
 - (d) All trash dumpsters or containers used for recycling shall be screened on three sides with architectural screening supplemented by plantings. Screening shall be based upon the standards below and subject to the approval of the City Planner:
 - 1) Four-foot tall architectural screening is acceptable when household style trash containers are used in place of dumpsters;
 - 2) The requirement for supplemental plantings may be waived by the City Planner in cases where dumpsters or containers are added to an existing development. In determining whether to grant a waiver, the City Planner shall be guided by these standards: proximity of the facility to

residential structures; efficacy of screening to mitigate any adverse effect of the use; and benefit of the screening relative to its cost.

- 3) When a site plan is submitted to modify or expand an existing building or site improvements, or accommodate a change in land use, screening requirements shall only be applied to those portions of the site that are directly affected by the proposed improvements, or change in land use, as determined by the City Planner.
- 4) Screening for single family and two-family uses along Arterial streets shall follow type "B" buffer yards. Screening for single family and two-family uses along Interstate 94 shall follow type "D" buffer yards. Screening for multiple family uses along Interstate 94 shall follow type "B" buffer yards.

B. General Standards:

- (1) Screening shall be continuous and in place at the time of occupancy. If vehicular or pedestrian access through the screen is necessary, the screening function shall be preserved, and approved by the City Planner.
- (2) Requirements: Screening may be architectural or vegetative, per the requirements below:
 - (a) Visual Impact: Required screening for any visual impact may be achieved with fences, walls, earth berms, hedges or other landscape materials. All walls and fences shall be architecturally harmonious with the principal building. The use of chain link fences equipped with slats is prohibited. Earth berms shall not exceed a slope of 3:1 unless provided with landscaping designed to minimize maintenance. The screen shall be designed to provide effective visual barrier during all seasons.

- (b) Height: Architectural screening shall be at least four feet in height, and shall be supplemented with plantings.
 - (c) Health: Vegetative material shall be alive and in good health.
 - (d) Small Coniferous Trees: shall be at least 4 feet in height at planting and allowed to grow to at least 6 feet in height. Large evergreen trees shall be at least 6 feet in height at planting and allowed to grow at least 10 feet in height. All required evergreen vegetation shall be maintained in good condition.
 - (e) Deciduous Trees: shall be at least 1" caliper 10" to 12" in height. They shall be supplemental and not deemed to be adequate screening in themselves.
 - (f) Plants: Acceptable vegetative plantings include any tree listing in the "Approved Plant List" for screening purposes.
- C. Screening design and development shall be compatible with the existing and proposed land use and the development character of the surrounding land and structures.
- D. Screening shall be of sufficient density and diversity to achieve the intent of this section. However, at the time of planting, the spacing of trees shall not exceed twelve (12) feet on center, and the planting pattern shall be staggered. Shrubbery shall be more closely spaced. Specific exceptions to this requirement may be granted by the City Planner to encourage quality and creativity of design where the intent of this section is met.
- E. Existing vegetation within buffer yards shall be considered as a substitute for otherwise required landscaping or screening, if in the opinion of the City Planner, the type, size, and density of the existing vegetation complies with the standards and intent of this section.
- F. When a proposed buffer yard has a variation in elevation of greater than 10 vertical feet at any

point, the required screening or landscaping within the yard shall be placed to maximize the effectiveness of the screening or landscaping, as determined by the City Planner.

G. Trees planted to meet any of the screening requirements may also be used to meet any other landscaping requirement within this standard.

H. Screening required by this Section shall be applied equally to all similarly situated properties. Modifications to these standards may be granted in writing by the City Planner if the City Planner finds any of the following circumstances exist on the proposed building site, or surrounding properties:

(1) Natural land characteristics such as topography or existing vegetation on the proposed building site would achieve the same intent of this section.

(2) Innovative landscaping or architectural design is employed on the building site to achieve an equivalent screening or buffering effect.

(3) The required screening and landscaping would be ineffective at maturity due to the proposed topography of the site, and/or the location of the improvements on the site.

(4) The topography of adjacent and surrounding sites is such as to render required screening ineffective at maturity.

11. River Buffer: A healthy and properly watershed buffer zone shall stabilize the shoreline or stream bank, provide erosion control benefits, provide a source of organic matter for aquatic organisms, capture nutrients, reduce flood peak flows, and provide water temperature controls.

A. River District is hereby created to celebrate, conserve, promote, and manage those areas on such as the Sheyenne River within the corporate limits of the City of West Fargo. These watershed buffer standards will ensure that new development is compatible with and enhances the unique river resources. It is the intent of these standards to promote economic revitalization throughout the river valleys while providing for an opportunity

for enjoyment of the river by a maximum number of citizens, neighbors, and guests. The goals of the River District are to:

- (1) Promote the protection and improvement of the Sheyenne River as water resources;
 - (2) Promote responsible development that will result minimal stormwater runoff, soil erosion, river bank destabilization, grading, and flood damage;
 - (3) Promote the preservation of a vegetative river resource corridor between the top of the river bank and new development to protect property from flooding and to enhance water quality;
 - (4) Encourage the planting of specific riparian landscaping that will aid in controlling erosion, improving water quality, reducing stormwater runoff, enhancing fish and wildlife habitats, and protecting visual quality;
 - (5) Promote the protection of existing natural areas, wetlands, and habitats, especially bluffs along the rivers;
 - (6) Encourage the establishment of vegetative buffer yards between incompatible land uses to lessen negative impacts;
 - (7) Encourage the conservation, protection, and promotion of the district's natural, cultural, and historic resources to enhance its value as a significant amenity to West Fargo's citizens, neighbors, and tourists;
 - (8) Promote improvements to existing infrastructure and the coordination of all new utility improvements;
- B. Conditional Uses: Any use that's not natural to the Sheyenne River and is manmade, is subject to a conditional use permit and the use in the River District must be approved by the City Planner.
- C. General Standards: The following standards shall be required for uses in the River District.

- (1) River District: The River District is any area that is a one hundred (100) feet from the Sheyenne River bank.
- (2) Landscaping/Buffering Standards: Landscaping and/or buffering shall be provided as required. Tree species suitable for a river environment shall be specified in the "Approved Tree List" for required landscaping and buffering in the River District. In areas experiencing natural stream bank erosion, planting of riparian vegetation shall be the required stabilization measure.
- (3) Parking Standards: Parking lots shall be allowed if approved by a conditional use permit if the parking lot doesn't harm the river but not recommended in the River District. No parking shall be permitted in any setback more than fifty (50) feet or less from the river. Uses in the River District shall be permitted a 20 percent reduction in required parking. Shared parking arrangements and common parking areas are encouraged.
- (4) Design Standards: The Design of the River District is to be a natural look. It shall include native plantings and native trees to this area. The speculative grading of land within the River District is prohibited. Natural slopes in excess of 45 degrees shall not be graded, and the existing vegetation shall not be removed. Buffers or shorelines shall have bands or strips with permanent vegetation that run adjacent to the river. The purpose of a buffer is to provide a protective barrier or cushion between activities occurring on the upland side of the buffer and the river.
- (5) Construction: All new or expanded operations/ construction located within or near the River District must take all precautions not to harm the river by polluting, increasing erosion, or littering.
- (6) Storage: Outdoor storage of materials is prohibited in the river district.
- (7) Walking Trail: The development of a pedestrian trail/greenway along the rivers is encouraged

within the River District. Land owners are encouraged to dedicate/grant a dry land right-of-way or easement within the river resource yard.

12. Open Space Landscaping:

- A. Undeveloped Areas: All undeveloped areas of the site, excluding protected wetlands, river districts, and tree preservation areas, shall be seeded or sodded. Seeding includes native prairie grass. In addition, an appropriate mix of trees and other plant material shall be provided to create an aesthetically pleasing site. Native plantings and xeriscaping is recommended but not limited to.
- B. Undeveloped Areas Next to Public ROW: Where undeveloped or open areas of a site are located adjacent to public right-of-way, the plan shall provide for over-story boulevard trees. A minimum of one (1) tree for every thirty (30) feet of frontage is required. The City Planner may approve alternatives if it meets the intent of the ordinance.

13. Parking Lot Landscaping Standards:

- A. Perimeter areas: When parking lot perimeters, including driveways and drive aisles, are not entirely screened visually by an intervening building or structure or land mass from any abutting right-of-way, there shall be provided landscaping designed to buffer direct views of cars and hard surface areas. The landscaping must break up expanses of hard surface areas, help to visually define boulevards and soften direct views of parking areas and provide for reforestation with overstory tree from the approved tree species list identified for parking or other species as approved by City Forester or City Planner.
 - 1. Perimeter Dimensions: The perimeter of the parking lot will consist of an area ten (10) feet to the outside of the parking lot area in all directions where otherwise green space would be. Within this ten (10) foot dimension the following shall apply:
 - (a) A six(6) foot minimum dimension to all trees from edge of pavement so that this

would provide space to where vehicles overhang;

(b) A four (4) foot minimum dimension to all trees where vehicles to not overhang; and

(c) A four (4) foot minimum dimension for perennials and shrubs.

B. Interior Landscaping Any open vehicular use areas containing more than six thousand (6,000) square feet of area, or twenty (20) or more vehicular parking spaces, shall provide interior landscaping in accordance with this division in addition to "perimeter" landscaping. Interior landscaping may be peninsular or island types. Landscaped area shall include all parking lot and drive islands and perimeter vegetative landscaping or green space. Required setback areas shall be excluded. There may not be more than twenty (20) continuous parking spaces (40 back to back) in a continual row without providing an island or peninsular landscaping.

C. Curbing: Concrete curbing is encouraged to protect landscaped areas unless the area is implemented to be a rain garden or bioswale.

D. Soil: All landscaping areas shall have the proper soil preparation to ensure the viability of the vegetation to survive. The landscaping plan shall provide specifications for proper soil preparation.

Source: Ord. 1049, Sec. 35 (2015)

14. Landscape Aesthetics and Design Criteria: Landscaping plans shall provide for an appropriate mix of plantings around the exterior footprint of all buildings. The intent of this section is to improve the appearance of the structures and, where necessary, break up large unadorned building elevations. These plantings are not intended to obscure views of the building or accessory signage.

A. Aesthetics: Landscape areas shall be designed with an emphasis on aesthetic appeal, function, safety, appropriateness to site conditions, and water conservation. The grouping of plants with similar water requirements is encouraged.

B. Xeriscaping: Xeriscaping is recommended throughout all landscapes.

- C. Utility Lines: Where overhead utility lines are located above landscape, small ornamental trees that do not exceed the growth of fifteen (15) feet shall be substituted instead of large shade tree that will have to be trimmed after tree has matured.
- D. Lawn Grass: Grass may be sodded, plugged, sprigged, or seeded, except that solid sod shall be used in swales or other areas subject to erosion. Slopes steeper than 10:1 shall be sodded. However, if natural prairie grass, cattails, or reeds are being implemented proper erosion control practices shall be engaged.
- E. Mulch: All trees, shrubbery, ground cover, and vine planting beds shall be mulched with standard mulch materials such as shredded cypress bark, pine bark chips, pine straw, or decorative stone to prevent invasion of other plant species and weeds, to absorb and retain moisture for the benefit of the plants, to prevent erosion, to enrich the soil, to provide protection from maintenance equipment, and to present a neat and orderly appearance of the landscaped area.

15. Existing Trees and Landscapes:

- A. Existing Tree Requirements: Where the site contains existing trees, a special effort shall be made to preserve them in accordance with the following requirements:
 - (1) Protect: Trees in a healthy condition shall be protected and preserved.
 - (2) Removing Trees: Removal of unhealthy or diseased trees is mandatory, however removal of healthy trees of a height of six feet or more shall be done only with approval of the City Forester. Tree replacement may be required.
 - (3) Construction: Trees to be preserved shall be protected during construction operations by the use of barricades or fencing large enough to include everything inside the outer edge or drip line of the tree and conspicuous enough to be seen easily by operators of trucks and heavy equipment.

- (4) Grading: No grade changes shall be made around existing trees without approval of the City Forester. Retaining walls shall be used when changing existing grades around specimen trees.
- (5) Roots: Tree roots shall be protected and preserved where possible. Tunneling shall be used to avoid damaging roots where construction in the immediate area is necessary. No trenching of tree roots within twenty feet of the trunk shall be performed without approval of the City Forester.
- (6) Chemicals: Chemical poisoning and run-off from petroleum products, lime and mortar, fertilizers , pesticides, soil sterilants , or the washing of equipment designed to apply these materials shall be prohibited, within the dripline of trees to be preserved.
- (7) Tree Rows: Agricultural tree rows (wind breaks) shall not be removed unless authorized by the City Forester or the City Council. These trees are not only an important part of the City's quality, but are needed to help control extreme winds and weather. Adequate measures shall be taken to mitigate any danger to the preservation or health of the tree rows. If agricultural tree rows (wind breaks) cannot be preserved, based upon the discretion from the City Forester stating that the trees are no longer in a healthy condition, the trees may be removed. Tree rows authorized for removal shall be replaced and/or additional landscape enhancement shall be provided as approved by the City Planner.

B. Wooded Areas:

- (1) Wooded areas with mature trees are to be preserved, at the applicants option may be included to meet all or part of the canopy requirements, provided the site plan identifies such trees and the trees meet the standards of size, health, placement, etc. set out in this section. The City Forester shall evaluate use of existing trees to ensure they have adequate health and strength to allow such use.

- (2) Existing trees in wooded areas designated to be included as part of these requirements should be protected during construction by fencing placed at a distance in feet equal to or greater than one and a half (1 ½) times the diameter of the tree in inches at the height of four (4) feet.

16. Installation:

- A. **Materials:** All materials installed shall conform to the approved landscape plans. If any changes of materials are desired, amended plans must be submitted and approved before installation.
- B. **Curb Cuts and Driveway:** Curb cuts and driveway aprons which are abandoned shall be removed and replaced with standard curbing and sod.
- C. **Construction:** During installation of landscaping, grassed areas off-site or within the public rights-of-way which have been disturbed by construction activity shall be cleaned of all debris, regraded to the proper elevations, and resodded or reseeded. Any preserved vegetation areas that have been damaged or removed shall be replanted and refurbished to restore the area as much as possible to its original condition.

Source: Ord. 1049, Sec. 36 (2015)

17. Maintenance:

- A. **Duty to Trim Trees:** It shall be the duty of all persons, whether owners or tenants, to keep the shade trees along the public streets and avenues adjoining such property trimmed in such a manner that such trees shall not interfere with travel on said streets, avenues, and sidewalks.
- B. **Responsible:** The property owner and tenant shall be jointly and severally responsible for maintenance of all required landscape, irrigation, and hardscape improvements as originally approved. This maintenance requirement shall carry with the land and shall be the responsibility of any subsequent owners and tenants of the property. It is the responsibility of the owner to notify any subsequent owners of the property of this responsibility.

- C. Improvements: Landscape areas and site improvements shall be maintained in good condition for a healthy, neat, and orderly appearance and shall be kept free from weeds and debris. All plant materials shall be maintained in a healthy and vigorous condition through proper irrigation, fertilization, pruning, weeding, mowing, and other standard horticultural practices so as to grow to their normal shape, color, and height, and to fulfill the required functions of screening, shading, buffering, and aesthetic appeal set forth by the City. The hatracking of trees is prohibited. All dead plants shall be replaced. All damaged plants including lawn grass shall be replaced or restored. Mulch shall be at the proper coverage and depth.
- D. Hardscapes: Pavement, curbing, wheel stops, and other hardscape improvements shall be sound and in place. If it is determined by maintenance inspections that such curbs are insufficient to prevent vehicular encroachment, then installation of bollards or similar devices substantial enough to prohibit encroachment may be required. Any such fixtures shall be architecturally consistent with other site fixtures and structures for materials and colors.
- E. Violations: The City shall notify the property owner and tenant in writing of any maintenance violations. Upon notification of a maintenance violation, the property owner, tenant, or authorized agent shall correct the violation within 30 days. Where immediate attention and care may restore damaged plants, the owner or tenant shall submit a treatment narrative and schedule prepared by a registered landscape architect or a local nursery professional. If the treatment plan and procedures fail to restore the plants to vigorous growth to meet their normal growth habit and the original design intent within 90 days, then the plants must be replaced.

18. Replacement:

A. Tree Replacement Requirements:

- (1) City Policy: It is the policy of the City to preserve natural woodland areas throughout the city and with respect to specific site development to retain as far as practical,

substantial tree stands which can be incorporated into the overall landscape plan.

- (2) Tree Health: The owner, tenant, and their respective agents shall be held jointly and severally responsible to maintain their property and landscaping in a condition presenting a healthy, neat and orderly appearance and free from refuse and debris. Plants and ground cover which are required by an approved site or landscape plan and which have died shall be replaced within three (3) months of notifications by the city. However, the Zoning Administrator may extend the time for compliance up to nine (9) months in order to allow for seasonal or weather conditions.
- (3) Clear Cutting: No clear cutting of woodland areas shall be permitted except if approved by the City Planning Department or City Forester.
- (4) Removed Trees: Any trees on the site which are a caliper of five (5) inches or more at a height of five (5) feet above the ground, or ornamental trees over twelve (12) feet in height which are to be removed during site development should be moved elsewhere on site or replaced with a new tree.

19. Plan Submission and Approval: The property owner or developer may be required to prepare a landscape plan drawn by a registered landscape architect or other professional acceptable to the city if deemed necessary by the City Planner. The city shall apply the following standards (but not limited too) in reviewing the landscape plans and shall contain these contents following:

- A. Plot plan: drawn to an easily readable scale, showing and labeling by name and dimensions, all existing and proposed property lines, easements, buildings, and other structures, vehicular use areas (including parking stalls, driveways, service areas, square footage), water outlets and landscape material (including botanical name and common name, installation size, on-center planting dimensions where applicable, and quantities for all plants used).
- B. Elevations: Typical elevations and/or cross sections may be required in any landscape plan.

- C. Context of Plans: Title block with the pertinent names and addresses (property owner, person drawing plan, and person installing landscape material), scale date, north arrow (generally orient plan so that north is to top of plan), and zoning district.
- D. Existing Landscape Material: shall be shown on the required plan and any material in satisfactory condition may be used to satisfy this article in whole or in part.

Source: Ord. 1049, Sec. 37 (2015)

20. Approved Plant List:

- A. The list of approved boulevard trees and other species as approved by the City Forester.

Source: Ord. 916, Sec. 68 (2012); Ord. 976, Sec. 3 (2013)

4-449-B. WIND ENERGY SYSTEMS STANDARDS.

1. Purpose. These Regulations have been adopted for the following purposes:

- A. To provide for large scale development and production of wind generated electricity in the City of West Fargo and to promote the public health, safety, morals, and general welfare of the community.
- B. To acknowledge that these facilities are clearly visible and cannot be hidden from view, however, design consideration shall include minimizing the degradation of the visual character of the area.
- C. To promote the supply of wind energy in support of North Dakota's goal of increasing energy production from renewable energy sources.

2. Definitions.

Abandoned: A wind energy system or project shall be considered abandoned when, once installed it fails to operate for 6 consecutive months. Exceptions may be made for catastrophic circumstances such as a natural disaster or if structure was vandalized.

Guy Wires: Anchoring wires that connect to the tower, from the 50-90% of the tower height, to anchors located 50-90% of the tower height in a horizontal distance from the base.

Federal Aviation Administration: (FAA) is an agency of the United States Department of Transportation with authority to regulate and oversee all aspects of civil aviation in the U.S.

Large Wind Energy System (LWES): All equipment, machinery, and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines that has means a wind energy system that:

- Is used to generate electricity;
- Has a nameplate capacity of 51 kilowatts or more;
and
- Has a total height of 101 feet or more.

Lattice: an interwoven open-mesh frame made by crisscrossing strips of wood, metal, or plastic to form a pattern

Owner: shall mean the individual or entity that intends to own and operate the wind energy system in accordance with this ordinance.

Rated Nameplate Capacity: The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment rated in Watts (W) or British Thermal Units (BTUs). Due to the nature of wind energy systems, Watts will be used as the standard unit in this ordinance.

Rotor diameter: means the cross sectional dimension of the circle swept by the rotating blades.

Shadow Flicker: When wind turbine blades are in motion the rotating blades cast shadows upon stationary objects. Shadow flicker only appears under very specific conditions and does not occur simply because the sun is shining and the blades are in motion.

Small Wind Energy System (SWES): All equipment, machinery, and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage equipment, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines that has means a wind energy system that:

- Is used to generate electricity;
- Has a nameplate capacity of 50 kilowatts or more; and
- Has a total height of 100 feet or more.

Conditional Use Permit: A permit provided by the land-use authority for nonconforming wind energy systems (e.g., a wind energy system that does not meet the criteria for energy wind systems set forth by this ordinance).

Tower: means the monopole, poles, lattice, freestanding, or guyed structure that supports a wind energy system.

Tower Height: means the vertical distance from ground level to the tip of a wind generator blade when the tip is at its highest point. The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point.

Wind Energy System (WES): means equipment that converts and then stores or transfers energy from the wind into usable forms of energy. This equipment includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries or other component used in the system.

Wind generator: means blades and associated mechanical and electrical conversion components mounted on top of the tower.

Zoning: Ordinances and bylaws adopted by the city to regulate the use of land, buildings, and structures to the full extent of the independent constitutional powers of the city to protect the health, safety, and general welfare of their present and future inhabitants.

3. Small Wind Energy Systems. (SWES)

- A. Height. The height of small wind energy systems shall not exceed 100 feet without prior approval from the Conditional Use Permit.
- B. Setbacks. The minimum property setback will be required of the total tower height (tower height + $\frac{1}{2}$ the rotor diameter) plus an additional 10%. Small Wind Energy Systems (SWES) shall be set back at a distance equal to 110% of the tower height of the system from all overhead utility lines, fuel tanks, and public roads or public right-of-ways. The base of the SWES must be set back from all property lines, public rights-of-way, and public utility lines a distance equal to the total extended height.
 - (1) The setback distance is the horizontal distance from the center of the supporting structure to the nearest property line or to the nearest overhead utility easement.
 - (2) The tower height of the SWES (tower height + $\frac{1}{2}$ the rotor diameter) may not exceed the distance of the base to the adjacent property.
- C. Minimum Blade Height. The minimum height of the lowest extent of a turbine blade shall be 25 feet above the ground.
 - (1) Height will be measured in feet.

- (2) Blades may not extend over parking areas, driveways, roads, sidewalks, rivers, streams, wetlands, conservation areas, scenic, or historic sites.
- (3) The height of the ground clearance is measured at the lowest point of the arc of the blades to the highest point of the ground located directly below the blade.

4. Large Wind Energy Systems. (LWES)

- A. Height. The height of large wind energy systems shall not exceed 100 feet without prior approval from the Conditional Use Permit.
- B. Setbacks. The minimum property setback will be required of the total tower height (tower height + $\frac{1}{2}$ the rotor diameter) plus an additional 10%. Large Wind Energy Systems (LWES) shall be set back at a distance equal to 110% of the tower height of the system from all overhead utility lines, fuel tanks, and public roads or public right-of-ways. The base of the LWES must be set back from all property lines, public rights-of-way, and public utility lines a distance equal to the total extended height. A tower may be allowed closer to a property line than its total extended height if the abutting property owner(s) grants written permission and the installation poses no interference with public utility lines or public road and rail right-of-ways;
 - (1) The setback distance is the horizontal distance from the center of the supporting structure to the nearest property line or to the nearest overhead utility easement.
 - (2) The tower height of the LWES (tower height + $\frac{1}{2}$ the rotor diameter) may not exceed the distance of the base to the adjacent property. Unless, it is approved by the adjacent property owner.
 - (3) The minimum abutting property building setback distance shall be 110% of the tower height on any adjacent building properties that have occupancy or inhabited.
- C. Setback Waivers. The city is designated to approve the permit, shall consider an exception to the

minimum setbacks required if the following criteria are met:

- (1) A signed agreement of consent from abutting property owner(s), and
 - (2) Any public right-of-ways and power lines are not impacted by the location.
- D. Minimum Blade Height. The minimum height of the lowest extent of a turbine blade shall be 30 feet above the ground.
- E. Shadow Flicker. Shadow flicker shall not negatively impact any adjacent properties. Unless it is tolerable from adjacent property owners.

5. All Wind Energy Systems

- A. Districts. Wind Energy Systems (WES) shall be permitted in all non-residential districts subject to the regulations. Any WES purposed in CO-I: Interstate Corridor Overlay District must be approved as a conditional use. WES shall be prohibited in the CO: Corridor Overlay District.
- B. Penalties. Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as stipulated in 4-573 and 4-574 of the zoning code.
- C. Administration and Enforcement.
- (1) This ordinance shall be administered by the city or other official as designated.
 - (2) The city may enter any property for which a building permit has been issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met.
 - (2) The city may issue orders to abate any violation of this ordinance.
 - (3) The city may issue a citation for any violation of this ordinance.
 - (4) The city may refer any violation of this ordinance to legal counsel for enforcement.

- D. Installation. No WES shall be installed until the owner(s) has notified the utility and power company. Once the Utility and Power Company has been informed of the customer's intent to install an interconnected customer-owned generator, and meet the requirements of the Utility or Power Company, they may proceed with the installation. Off-grid systems shall be exempt from this requirement. Construction of the WES are to follow the Construction and use to be as provided in application plans and permits, regulations stated in 4-534 of the Zoning Code.
- E. Access. All access doors, climbing apparatuses, or access ways to towers, structures, and electrical equipment shall remain locked and inaccessible by the public.
- F. Sound. The WES and associated equipment shall comply with the existing noise or sound ordinance. Sound produced by a WES shall not exceed the following limits at the property line:

<u>Zoning District</u>	<u>Day-Night</u>
Commercial:	50-45
Industrial:	65-60

- (1) Sound pressure level limits are measured in dB (decibels). Sound is measured at the property line of any receiving property.
 - (2) Day is defined as the time period from 7:00 a.m. to 10:00 p.m. Night is defined as the time period from 10:00 p.m. to 7:00 a.m.
 - (3) Following approval and installation of a WES, the city official may require the owner/operator of the WES to engage a certified technician to perform sound measurements at the closest property line to determine and report ambient and operating decibel levels.
- G. Violations. It is unlawful for any person to construct, install, or operate a WES that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance. Any WES installed prior to the adoption of this ordinance are exempt.

Any violation of a WES shall be enforced and prosecuted by the city.

- H. Braking System. All WES shall be equipped with automatic or manual braking controls to prevent uncontrolled rotation and to limit the rotation speed to the design limits of the WES.
- I. Guy Wires. Guy Wires are required for any WES that has a freestanding lattice towers. Guy Wires also may be required to be installed after completion of the WES if the city feels necessary.
- J. Color and Finish. The WES shall be a neutral color that blends with the environment and complies with FAA standards. Gray, beige, and white are recommended. To minimize off-site visibility to the greatest extent possible, the color of a structure shall be a neutral white or light gray and the surface finish shall be non-reflective.
- K. Lighting. WES shall be lighted as required by the FAA. Spotlights are prohibited unless required by the FAA. Lighting of the WES beyond FAA standards shall be directed downward and limited to that required for safety and operational purposes.
- L. Signage and Advertising. Signs and advertising shall be restricted to reasonable identification of the manufacturer, operator of the WES and utility, and safety signs. No sign that is visible from any public street shall be permitted on the generator, tower, building or other structure associated with a WES other than the manufacturers or installer's identification and appropriate warning sign.
- M. Roof Mounted. A roof-mounted WES is allowed on structures as long as the object doesn't exceed height restrictions and is located in a safe position on the roof of the structure that's approved by the City Building Inspector. Also, the owner(s) must install the WES according to manufacturer's guideline.
- N. WES Understanding for Approval. The Owner(s) of the WES must understand and sign the Wind Energy Systems Understanding for Approval in order to be eligible for a Building Permit.
- O. Interference. The WES shall not cause power quality issues including but not limited to electromagnetic

interference, radio frequency interference, harmonics, common mode noise, electronic or electromagnetic interference with signal receptions or transmissions beyond the boundaries of the property upon which the WES is located.

- P. Code Compliance. A WES including tower shall comply with all the current applicable state construction and electrical codes, and the National Electrical Code.
- Q. Insurance. Insurance is required for any WES. Owner must have written approval that the WES is properly insured by a licensed insurance company.
- R. Building Permit. All WES shall require a building permit prior to installation. If WES is 100 feet or taller, the applicant shall obtain conditional use permit approval by the city prior to installation. Building permits are to follow the building permit regulations stated in 4-530 of the Zoning Code.
- S. Expiration. If expiration of building permit(s), owner of WES must comply with the expiration building permit regulations stated in 4-533 of the Zoning Code. A permit issued pursuant to this ordinance shall expire if:
 - (1) The WES is not installed and functioning within 24-months from the date the permit is issued; or,
 - (2) The WES is abandoned, out of service, or otherwise unused for a continuous 6-month period.
- T. Utility notification and interconnection. WES that connects to the electric utility shall comply with the City Inspector, the Public Service, and with the local power or utility company.
- U. Removal. Removal of any non-operational, non-functional, or abandoned WES is mandatory. Facilities shall be well maintained in an operational condition that poses no potential safety hazard. Owner(s) may have to remove the WES if it serves an operational threat to the safety of the community, if the City Building Inspector deems it is necessary. Removal of a WES:

- (1) If a WES remains nonfunctional for a continuous period of 6 months (months equivalent to 30 days), the system shall constitute a public nuisance and shall be removed. Public nuisances are classified by the, Public Nuisance Per Se, regulations stated in 4-571 of the Zoning Ordinance.
- (2) The owner shall remove a defunct system at the owner's expense.
- (3) Removal includes the entire structure and related appurtenances including any foundation and transmission systems.

6. Conditional Use Permit. Towers that are 100 ft. or taller require a conditional use permit. Conditional Use Permit shall follow the Conditional Use Permit regulations stated in 4-550 in the Zoning Ordinance. An application for a conditional use permit for the placement of a WES shall include the following:

A. Site Plan. A Site Plan drawing showing features of the property and adjacent land within 300-feet of the subject parcel, including but not limited to:

- (1) Location and height of the WES
- (2) Property boundaries
- (3) Distances from a WES to closest points on adjacent property boundaries
- (4) Location and dimensions of structures
- (5) Zoning districts of all adjacent properties
- (6) Owners of all adjacent properties
- (7) Locations, dimensions and descriptions of utility easements
- (8) Location of overhead utility lines
- (9) Location of underground utility lines
- (10) Distances from the WES to the closest points on utility easements.

- B. Information. Written information from the manufacturer on the proposed WES stating the following:
 - (1) Compliance with noise standards
 - (2) Evidence that the proposed WES model will be operational
 - (3) Dimensions and energy properties.
- C. Shadow Flicker. Unless stated by the manufacturer as not causing shadow flicker in the proposed installation, a shadow flicker model and map showing locations affected by the object.
- D. FAA. If FAA regulations apply to the owners WES they must provide a copy of letter of compliance of the proposed WES with airport zoning from any airport within twenty miles of the proposed site.

Source: Ord. 916, Sec. 69 (2012)

4-450. OFF-STREET PARKING AND LOADING REGULATIONS.

Subsections:

- 4-451. Automobile Parking Space Required.
- 4-452. Plans and Approval Required.
- 4-453. Design Standards.
- 4-454. Required Off-Street Loading Spaces.

4-451. AUTOMOBILE PARKING SPACE REQUIRED. No building shall be erected, enlarged to the extent of increasing the floor area, or changed in use unless there is provided on the lot, space for parking of automobiles as specified below. When sufficient off-street parking cannot be provided on the same lot or a lot contiguous to the principal use because of unique circumstances, and arrangements can be made to provide off-street parking on a noncontiguous lot, such parking arrangements shall be considered by the Planning and Zoning Commission on a case-by-case basis. The Planning and Zoning Commission may grant permission to provide parking on a noncontiguous lot provided traffic or land use problems are not created, and a long-term agreement can be negotiated so the required off-street parking is maintained as long as the principal use exists.

The Planning and Zoning Commission may allow sharing of required off-street parking by two separate uses provided the normal peak parking times of the two uses do not coincide. Only the off-street parking spaces not normally used by the off-peak use shall be counted as off-street parking for the peak use. Each use shall have the total required off-street parking available during their respective periods of peak parking use. A long-term agreement shall be negotiated whereby both uses are bound to the establishment and maintenance of the shared off-street parking.

If it can be demonstrated by the property owner through market studies or other means that the required off-street parking is excessive and/or a lower parking demand is supported by the Institute of Traffic Engineers Parking Generation manual and a lesser requirement justifiable, the City Commission may reduce the number of required spaces by passage of a resolution approved by a majority of the members of the City Commission.

Parking areas shall be so designed that vehicles may enter, circulate, park and exit in a convenient and orderly fashion. Required off-street parking shall be provided in such a manner that vehicles do not encroach on a public right-of-way. The minimum size of each parking stall shall be nine feet by 19 feet, exclusive of aisle width. For any parking area except for single, two-family, and 3-4 unit townhome dwellings, a suitable means of turnaround must be provided at maximum design capacity so no vehicle shall back onto public streets or alleys. Where this cannot be accomplished for parking lots of five (5) or fewer vehicles, the City may consider an alternative design as a conditional use.

Reference herein to "employee(s) on the largest shift" means the maximum number of employees employed at the facility regardless of the time period during which this occurs and regardless of whether

any such person is a full-time employee. The largest shift may be a particular day of the week or a lunch or dinner period in the case of a restaurant.

The term "capacity," as used herein, means the maximum number of persons which may be accommodated by the use as determined by its design or by building or fire code regulations, whichever is greater.

Any use not specifically mentioned below shall meet the requirements for uses most clearly related as determined by the Zoning Enforcement official.

The number of off-street parking spaces which shall be required are as follows:

1. Agricultural Support Uses - One space per employee on the largest shift, plus one space per 200 square feet of gross floor area provided for customer sales and service operations.
2. Residential Uses:
 - a. Single-Family - Two spaces per dwelling.
 - b. Multiple Family Unites - One space per efficiency dwelling unit and two spaces per dwelling unit for one or more bedroom units or the floor area divided by 440, whichever is greater.
3. Institutional, Recreational and Special Residential Uses:
 - a. Camps (Day or Youth) - One space per employee on the largest shift, plus one space per camp vehicle normally stored on the premises.
 - b. Church - One space per three seats of maximum capacity.
 - c. Community and Recreation Center - One space per 250 square feet of gross floor area, or one space per four patrons to the maximum capacity, plus one space per employee on the largest shift.
 - d. Day or Nursery School, Child Care Facility - One space per teacher/employee on the largest shift, plus one per space per ten students for loading and unloading.
 - e. Group Dwellings, Fraternity or Sorority, Boarding or Lodging Houses - One space per bedroom or sleeping room, unless it can be demonstrated that the occupants will not be driving.
 - f. Libraries and Museums - One space per 350 square feet of floor area or one space per four seats to the maximum capacity, whichever is greater, plus one space per employee on the largest shift.

- g. Monasteries, Convents - One space per six residents, plus one space per employee on the largest shift, plus one space per five chapel seats if the public may attend.
 - h. Nursing Homes - One space per six patient beds, plus one space per employee on the largest shift.
 - i. Schools:
 - (1) Elementary and Junior High - One space per teacher and staff member.
 - (2) Senior High - One space per teacher and staff member on the largest shift, plus one space per five students.
 - (3) College, Trade and Vocational - One space per staff member of the largest shift, plus one space per four students of the largest class attendance period.
 - j. Swimming Facility - One space per 100 square feet of gross water area, plus one space per employee on the largest shift.
 - k. Tennis, Racquetball, Handball Courts - Two spaces per court, plus one space per employee on the largest shift.
 - l. Bowling Alley - Three spaces per lane, plus one space per employee on the largest work shift.
 - m. Miniature Golf - One space per hole, plus one space per employee on the largest work shift.
 - n. Outdoor Theatre - One space per four patrons to the maximum capacity of the facility inclusive of both indoor and outdoor capacity.
 - o. Skating Rink, Ice or Roller - One space per 300 square feet of gross floor area.
 - p. Health Club - One space per 100 square feet of gross floor area, plus one space per employee on the largest shift.
 - q. Golf Courses - Five spaces per hole.
 - r. Other Commercial Recreational Uses - One space per four patrons to the maximum capacity of the facility, or one space per 250 square feet of gross floor area, whichever is more appropriate.
5. Commercial and Entertainment Uses, Except as Specifically Designated Below - One space per 250 square feet of gross floor area of customer sales and services, plus one space

per 250 square feet of storage and/or office gross floor area.

- a. Banks - One space per 200 square feet gross floor area.
- b. Eating and Drinking Establishments - One space per four patron seats or one space per 100 square feet of gross floor area, whichever is greater, plus one space per employee on the largest shift.
- c. Fast Food Establishments:
 - (1) With Seating - One space per three patron seats, plus one space per employee on the largest shift.
 - (2) Without Seating - One space per 200 square feet of gross floor area, plus one space per employee on the largest shift.
- d. Funeral Home - One space per four patron seats or 25 spaces per chapel unit, whichever is greater.
- e. Grocery or Supermarket - One space per 200 square feet of gross floor area or customer sales and service, plus one space per 200 square feet gross floor area of storage.
- f. Hospital - One space per three patient beds, plus one space per staff doctor and per employee on the largest shift.
- g. Hotel or Motel - One space per room or suite, plus 50 percent of the spaces otherwise required for accessory uses, e.g. restaurants and bars.
- h. Private Clubs and Lodges - Required parking spaces are to be determined by the specific uses associated with the facility.
- i. Repair Services - A minimum of three spaces shall be provided for the first 2,000 square feet of gross floor area, plus one additional space for each 1,000 square feet of gross floor area thereafter, plus one space per employee on the largest shift.
- j. Furniture and Home Furnishing Stores - One space per 500 square feet of customer sales, plus one space for every 1,000 square feet of storage area.
- k. Self-Service Laundry - One space per three machines.
- l. Assembly or Exhibition Hall, Sports Arenas, Theaters and Auditoriums - One space per five seats based on maximum capacity.

- m. Taverns, Dance Halls, Night Clubs and Lounges - One space per 50 square feet of gross floor area.
 - n. Vehicle Sales - Six parking spaces plus one space per 500 square feet of gross floor area over 1,000 feet.
 - o. Vehicle Repair and Maintenance Services - One space per 400 square feet of gross floor area, plus one space per employee on the largest shift.
 - p. Games of Chance Operations - One space per three patron seats.
6. Offices Uses, Except as Specifically Designated Below - One space per 200 square feet of gross floor area.
- a. Beauty and Barber Shops - Two spaces per operator, plus one space per employee on the largest shift.
 - b. Medical Offices and Clinics - Five spaces per doctor, plus one additional space per employee on the largest shift.
7. Industrial Uses, Except as Specifically Designated Below - One space per employee on the largest shift, plus one space per company vehicle regularly stored on premises.
- a. Veterinary Office - Three spaces per doctor, plus one space per employee on the largest shift.
 - b. Adult Entertainment Center - One space per employee on the largest shift, plus one space per 150 square feet of gross floor area.
8. Nursery Uses - One space per employee on the largest shift, plus one space per 500 square feet gross floor area of inside sales or display.
9. Handicapped Parking - All parking lots must be designed to provide handicapped parking spaces according to standards established under Americans with Disabilities Act (ADA).

Source: Ord. 434, Section 1 (1992); Ord. 458, Sec. 18 (2005); Ord. 1049, Sec. 38 (2015).

4-452. PLANS AND APPROVAL REQUIRED. Plans for improved, new or expanding private driveways and off-street parking spaces, shall be prepared and submitted to the City Building Administrator and City Planner for review and approval. Before approving any private driveway or parking layout, the Building Administrator and City Planner shall satisfy themselves that the driveway and/or spaces provided are usable and meet standard design criteria. All driveways and off-street parking spaces within the City limits shall be improved with a concrete or bituminous surface except for structures which are located on public roads or alleys that are graveled. In lieu of improving all driveways and off-street

parking spaces in industrial areas, a property owner may submit a plan demonstrating that improved driveways and off-street parking spaces will, within reason, retain soils, mud or other loose materials from being carried onto public streets by vehicles or equipment, i.e., by improving with concrete or bituminous surface fifty (50) feet or more of the area on the property where access to the public street(s) is gained. In addition to providing improved driveways and parking areas, industrial areas may need to expand those areas with gravel and/or crushed concrete to avoid carrying soils, mud or other loose materials into the street(s). All required off-street parking spaces shall be clearly marked. All parking lots being hard surfaced must be designed and striped to meet the design standards according to Section 4-453.

Source: Ord. 434, Sec. 2 (1992); Ord. 458, Sec. 19 (2005); Ord. 916, Sec. 48 (2012); Ord. 976, Sec. 4 (2013); Ord. 989, Sec. 1 (2014); Ord. 1066, Sec. 1 (2016)

4-453. DESIGN STANDARDS.

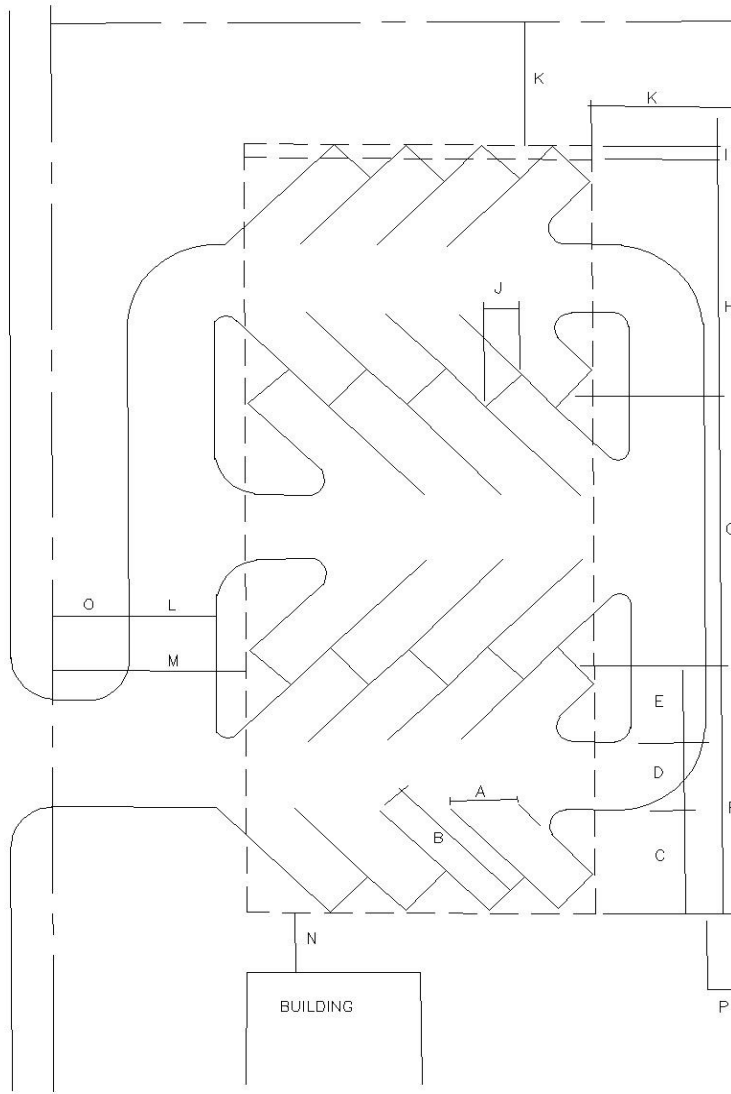
1. In all residential districts, required parking spaces shall be located on the same premises as the use they serve. In other districts, they shall be located on the premises or within 300 feet distance.
2. Parking areas for one or two family dwellings shall be in the garage, in the rear or side yards, or on the driveway leading to the garage only.
3. Parking areas shall be used for automobile parking only, with no sales, dead storage, repair work, dismantling or servicing of any kind permitted.
4. All uses, excluding one and two family residences, where parking or access facilities are located within 20 feet of a one or two family property line shall be required to effectively screen their parking facility from the residential use. Screening may include a sight obscuring fence at least 5 feet in height or plantings of sufficient type, density, and height so as to provide year-round screening. Before a building permit shall be issued, the building official shall approve the screening proposal.
5. Off-street parking areas shall be improved with a durable surface, afford adequate drainage and shall have bumper guards, unless owner can establish to the satisfaction of the Building Official that such guards are not necessary.

Source: Ord. 1049, Sec. 39 (2015)

PARKING LAYOUT REQUIREMENTS FOR 9 FOOT BY 18.5 FOOT
STALLS AT VARIOUS ANGLES

<u>DIMENSION</u>	<u>ON DIAGRAM</u>	<u>MINIMUM DIMENSIONS (feet)</u>			
		<u>45°</u>	<u>60°</u>	<u>75°</u>	<u>90°</u>
Stall width, parallel to aisle	A	12.7	10.4	9.3	9.0
Stall length of line	B	25.0	22.0	20.0	18.5
Stall depth	C	17.5	19.0	19.5	18.5
Driving aisle width between stall lines	D	12.0	16.0	23.0	26.0
Stall depth, interlock	E	15.3	17.5	18.8	18.5
Module, edge of pavement to interlock	F	44.8	52.5	61.3	63.0
Module, interlocking	G	42.6	51.0	61.0	63.0
Module, interlock to curb face	H	42.8	50.2	58.8	60.5
Bumper overhang (typical)	I	2.0	2.3	2.5	2.5
Offset	J	6.3	2.7	0.5	0.0
Side and rear yard setback	K	Lots in Residential & C Districts Which Abut Residential Districts: 5 feet. Other Districts: None			
Cross aisle, one-way	L	14.0	14.0	14.0	14.0
Cross aisle, two-way	-	24.0	24.0	24.0	24.0
Front yard setback (Parking Lots)	M	10' in Residential Districts or for Residential Uses in "C" Districts. Other: None.			
Setback from principal building	N	Residential Districts: 10 feet. Other Districts: 5 feet			
Front lot line to drive (landscape area)	O	10' in Residential Districts or for Residential Uses in "C" Districts. Other: None.			
Side and rear lot line to drive (landscape area)	P	Residential & C Districts: 5 feet. Other Districts: None			

PARKING LAYOUT DIAGRAM



4-454. REQUIRED OFF-STREET LOADING SPACES. REQUIRED OFF-STREET LOADING SPACES. Commercial and industrial uses shall provide for loading areas on the property which do not affect traffic on public streets. Adequate space shall be provided on the property to allow for ingress into the property, circulation within the property and egress from the property. Loading areas shall be shown on a site plan and approved by the City Planner and Building Administrator as part of the building permit. Loading spaces required under this section shall be at least 50 feet long and 12 feet wide. Every lot used for commercial or industrial purposes and having a building or buildings with a total floor area of at

least 10,000 square feet and every lot used for office or research purposes on which there is a building or buildings having a total floor area of at least 20,000 square feet, shall be provided with an off-street loading space. An additional off-street loading space shall be required for lots used for commercial or industrial purposes where the floor area of all buildings exceeds 100,000 square feet.

Source: Ord. 458, Sec. 20 (2005)

4-460. SIGN REGULATIONS. (Source: Ord. 677, Sec. 1 [2003])

Subdivisions:

- 4-460.1 Objectives.
- 4-460.2 Conflict with Zoning Chapter.
- 4-460.3 Definitions.
- 4-460.4 Existing Signs and Nonconforming Signs.
- 4-460.5 Nonconforming Sign Maintenance and Repair
- 4-460.6 Nonconforming Uses.
- 4-460.7 General Sign Provisions.
- 4-460.8 Signs Not Requiring Permit and Prohibited Signs.
- 4-460.9 General District Regulations.
- 4-460.10 Special District Regulations.
- 4-460.11 Inspection.
- 4-460.12 Permit, Application, Variance and Commission Approval.
- 4-460.13 Enforcement.
- 4-460.14 Violation a Misdemeanor.

4-460.1. OBJECTIVES.

1. To establish standards which permit businesses a reasonable and equitable opportunity to advertise.
2. To preserve and promote civic beauty and prohibit signs which would detract from this objective because of size, shape, height, location, condition, cluttering or illumination.
3. To insure that signs to not create safety hazards.
4. To preserve and protect property values.

4-460.2. CONFLICT WITH ZONING CHAPTER. If there is a conflict between this chapter and the Zoning chapter, the Zoning chapter shall prevail.

4-460.3. DEFINITIONS. The following terms, as used in this chapter, shall have the meanings stated:

ADVERTISING SIGNS. A sign used to advertise products, goods or services not exclusively related to the premise on which the sign is located.

ADDRESS SIGN. A sign communicating only a street address.

ALTERATION. Any major alteration to a sign excluding routine maintenance, painting or change of copy.

AREA IDENTIFICATION SIGN. A freestanding sign identifying the name of a single or two-family residential subdivision

consisting of twenty (20) or more lots; a residential planned unit development; a multiple residential complex consisting of three (3) or more independent operations; a single business consisting of three (3) or more separate structures; a manufactured home court; or any integrated combination of the above. The sign shall only identify the area, complex or development and shall not, unless approved by the Commission, contain the name of individual owners or tenants. The sign may not contain advertising.

AWNING. A hood or cover projecting from the wall of a building, and which may be retracted, folded or collapsed against the face of a supporting building.

BANNER SIGN (PERMANENT). A sign constructed of canvass or other durable fabric that is enclosed within a cabinet or frame and is permanently mounted to the wall of a building.

Source: Ord. 704, Sec. 1 (2004)

BANNERS. Attention getting devices which resemble flags and are of a paper, cloth or plastic-like consistency.

BEACON. Any light with one or more beams directed into the atmosphere or directed at one or more points not on the same lot as the light source; also any light with one or more beams that rotate or move.

BENCH SIGNS. A sign affixed to a bench such as at a bus stop.

BILLBOARD. An advertising sign.

BUILDING FACADE. That portion of the exterior elevation of a building extending from grade to the top of a parapet wall or eaves and the entire width of the building elevation.

BUSINESS SIGN. Sign identifying a business or group of businesses, either retail or wholesale, or any sign identifying a profession or used in the identification or promotion of any principal commodity or service, including entertainment, offered or sold upon the premises where the sign is located.

CAMPAIGN SIGN. A temporary sign promoting the candidacy of a person running for governmental office, or promoting an issue to be voted on at a governmental election.

CANOPY SIGN. Message or identification affixed to a canopy or marquee that provides a shelter or cover over the approach to any building entrance.

CONSTRUCTION SIGN. A sign at a construction site identifying the project or the name of the architect, engineer, contractor, financier or other involved parties.

DIRECTIONAL SIGNS. A sign erected with the address and/or name of a business, institution, church or other use or activity plus directional arrows or information on location.

DIRECTORY SIGN. An exterior informational wall sign identifying the names of businesses served by a common public entrance in a shopping center or office buildings.

FLASHING SIGN. An illuminated sign upon which the artificial light is not kept constant in terms of intensity or color when the sign is illuminated.

FREESTANDING SIGN. Self-supported sign not affixed to another structure.

HIGH IMPACT SIGN. Any high profile sign such as mobile electronic message centers or reader boards, automatically changing sign faces, vehicles and equipment with sound equipment and/or significant signage, and other high impact business and/or events promotion schemes.

Source: Ord. 702, Sec. 1 (2004)

IDENTIFICATION SIGN. A sign which identifies the business, owner, manager, resident or address of the premises where the sign is located and which contains no other material.

ILLUMINATED SIGN. Sign illuminated by an artificial light source either directed upon it or illuminated from an interior source.

INFORMATIONAL SIGN. Any sign, including gas price and menu board signs, giving information to employees, visitors or delivery vehicles, but containing no advertising or identification.

INSTITUTIONAL SIGN. A sign identifying the name and other characteristics of a public or quasi-public institution on the premises where the sign is located.

INTEGRAL SIGN. A sign carrying the name of a building, its date of erection, monumental citations, commemorative tablets and the like when carved into stone, concrete or similar material or made of bronze, aluminum or other permanent type of construction and made an integral part of the structure.

LOGO. One or more letters, symbols or signs used to represent a name or trademark of a business or other entity. A logo sign is also considered an identification sign.

MARQUEE. A canopy.

MENU BOARD. Any sign containing a food price list for restaurant customers, but containing no advertising or identification.

MONUMENT SIGN. A sign where the extent of the sign structure is attached to the ground or a foundation in the ground; and where there are no poles, braces, or other visible means of support other than attachment to the ground.

MOTION SIGN. A sign which revolves, rotates, has moving parts or gives the illusion of motion.

MULTIPLE TENANT SITE. Any property or business site that contains more than one (1) business, and each business has a separate lease.

Source: Ord. 702, Sec. 1 (2004)

NONPROFIT ORGANIZATION. A corporation formed under North Dakota Statutes, a church or community or civic group.

PARAPET. A low wall which is located on a roof of a building.

PENNANT. Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire or string, usually in series, designed to move in the wind.

PORTABLE SIGN. Portable signs shall include, but not be limited to: Signs constructed so as to be movable, either by skids, wheels, truck, or other conveyance; any sign which does not have a permanent foundation or is otherwise permanently fastened to the ground, excluding those signs defined under "High Impact Signs". When on a trailer, the removal of the wheels or undercarriage does not place the sign in another category, nor does the anchoring of the sign by means of concrete blocks, sandbags, or other types of temporary anchors.

Source: Ord. 702, Sec. 1 (2004)

PROJECTING SIGN. A sign, other than a wall sign, which is affixed to a building and perpendicular from the building wall.

PUBLIC ENTRANCE. Passage or opening which affords entry and access to the general public.

PUBLIC ENTRANCE, COMMON. A public entrance providing access for the use and benefit of two (2) or more tenants or building occupants.

READER BOARD. A sign with an electronic changing message and/or animation to create a special effect or scene. Electronically controlled time and temperature signs are included.

REAL ESTATE SIGN. A business sign placed upon property advertising that particular property for sale or rent.

ROOF LINE. The top of the coping or when the building has a pitched roof, the intersection of the outside wall with the roof.

ROOF SIGN. Sign erected, constructed or attached wholly or in part upon or over the roof of a building.

SIGN. Use of words, numerals, figures, devices or trademarks by which anything is made known such as individuals, firms, processions, businesses, services or products and which is visible to the general public.

SIGN AREA. The area within the marginal lines of the surface of a sign, which bear the advertisement, or in the case of message, figures or symbols attached directly to a building or sign structure, that area which is included in the smallest rectangle or series of geometric figures used to circumscribe the message, figure or symbol displayed thereon.

SIGN, MAXIMUM HEIGHT OF. The vertical distance from the grade to the top of the sign.

SIGN STRUCTURE. The supports, uprights, bracing and framework for a sign, including the sign area.

STREET FRONTAGE. The proximity of a parcel of land to the streets. A corner lot has two (2) or more frontages, but may use only one side for the purpose of calculating allowable sign area. It may be the longest side.

TEMPORARY SIGN. Unless otherwise defined as a "Portable Sign" or "High Impact Sign", any sign, banner, pennant, valance, or advertising display constructed of cloth, canvas, light fabric, cardboard, wallboard or other light materials, and wood or metal signs less than twelve (12) square feet in area, which does not have a permanent foundation or is otherwise permanently fastened to the ground, and which is erected or displayed for a limited period of time shall be considered a temporary sign.

Source: Ord. 702, Sec. 1 (2004)

WALL SIGN. A sign affixed to the exterior wall of a building, and which is parallel to the building wall. A wall sign does not project more than twelve (12) inches from the surface to which it is attached, nor extend beyond the top of a parapet wall.

WALL GRAPHICS. A sign painted directly on an exterior wall.

WINDOW SIGN. A sign affixed to or inside of a window in view of the general public. This does not include merchandise on display.

4-460.4 EXISTING SIGNS AND NONCONFORMING SIGNS.

1. Except for signs determined to create a public safety hazard due to content or due to disrepair and condition, or illegally established signs, all legally established signs existing upon the effective date of this Chapter shall not be enlarged or reconstructed, but may be continued at the size and in the manner or operation existing upon such date.
2. A nonconforming sign:
 - a. May not be structurally altered except to bring it into compliance with the provisions of this chapter.
 - b. May not be enlarged.
 - c. May not be reestablished after its removal or discontinuance.
 - d. May not be repaired or otherwise restored, unless the damage is to less than fifty (50) percent of sign structure.
 - e. May not be replaced, unless the sign is within an existing sign cabinet.
 - f. Shall be removed if there is a change in use or business license for the property.
 - g. May not be continued for more than six (6) months following the adoption of this ordinance if the sign is temporary in nature and/or not permanently mounted.

4-460.5. NONCONFORMING SIGN MAINTENANCE AND REPAIR. Nothing in this chapter shall be construed as relieving the owner or user of a legal nonconforming sign or owner of the property on which the legal nonconforming sign is located from the provisions of this chapter regarding safety, maintenance, and repair of signs; provided, however, that any repainting, cleaning and other normal maintenance or repair of the sign or sign structure shall not modify the sign structure or copy in any way, which makes it more nonconforming or the sign shall lose its legal nonconforming status.

4-460.6. NONCONFORMING USES. When the principal use of land is legally nonconforming under the Zoning Chapter, all existing or proposed signs in conjunction with that land, shall be considered conforming if they are in compliance with the sign provisions for the most restrictive zoning district in which the principal use is allowed.

4-460.7. GENERAL SIGN PROVISIONS.

1. The design and construction standards as set forth in the City's adopted building code, as may be amended, are hereby adopted.
2. The installation of electrical signs shall be subject to the State's Electrical Code. Electrical service to such sign shall be underground.
3. Signs containing noncommercial speech are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs.
4. Signs shall not create a hazard to the safe, efficient movement of vehicular or pedestrian traffic. No private sign shall contain words which might be construed as traffic controls, such as "stop," "caution," "warning," unless the sign is intended to direct traffic on the premises. No sign may cause a nuisance because of lighting glare, focus, animation or flashing. No sign may be placed in a manner as to materially impede vision between a height of two and one-half (2½) feet and ten (10) feet above the center grades of the intersecting streets within thirty (30) feet to the point of curvature of the intersecting street curbs.
5. Signs and sign structures shall be properly maintained and kept in a safe condition. Sign or sign structures which are rotted, unsafe, deteriorated or defaced shall be repainted, repaired or replaced by the licensee, owner or agent of the building upon which the sign stands.
6. No sign shall be attached or be allowed to hang from any building until all necessary wall and roof attachments have been approved by the Building Official.
7. No signs, guys, stays or attachments shall be erected, placed or maintained on rocks, fences or trees nor interfere with any electric light, power, telephone or telegraph wires or the supports thereof.
8. The use of temporary signs such as banners, inflatable signs, tethered balloons and similar devices may be erected on the premises of an establishment for special events, provided that such signs may not be displayed for

more than thirty (30) calendar days within any four (4) month period. Violations for temporary signs must be corrected within seven (7) days of written notification. Banners may be considered permanent signs provided they are constructed of canvass or other durable fabric enclosed within a cabinet or frame which is permanently and entirely mounted on the wall of a building and comply with the sign regulations set forth herein.

Source: Ord. 704, Sec. 2 (2004)

9. Illuminated signs shall be shielded to prevent lights from being directed at oncoming traffic in such brilliance that it impairs the vision of the driver. Nor shall such signs interfere with or obscure an official traffic sign or signal. This includes indoor signs which are visible from public streets.
10. Portable and High Impact signs shall be governed by the following provisions:
 - A. Portable Signs - Prior to the placement of a portable sign, a portable sign permit must be obtained from the City of West Fargo Planning Office. A portable sign permit may be granted for a period not to exceed fourteen (14) days at a time, except for municipal construction zones which impact customer access to a business or use, whereupon the Planning Director may authorize extended display periods. Upon removal of the portable sign, it must be at least fourteen (14) days before another permit may be issued at that location for the same business or use, provided that portable signage on the site does not exceed 56 days within one calendar year for the same business or use. Portable sign permits shall be issued provided the following:
 - 1) The portable sign is located in a Commercial (C, CM, or PUD), Industrial (CM, M, or PUD), or Public Facilities (P) Zoning District.
 - 2) The portable sign is located upon the same parcel which the advertisement/notice is intended, unless advertising a community-wide event, as determined the Planning Director.
 - 3) No portable sign may exceed sixty (60) square feet in area, with the sign face not to exceed six (6) feet in height or ten feet in width, and may not exceed eight feet (8) feet in overall height.

- 4) No portable sign may be placed upon the public right-of-way without approval of the City Commission. Portable signs shall meet the setback requirements for freestanding signs for Corridor Overlay Districts and underlying zoning districts.
- 5) No portable sign placed within one hundred (100) feet of an area zoned for residential use may have blinking, flashing or fluttering lights or other illuminating devices that have a changing intensity, brightness or color.
- 6) No part of a portable sign may be located within the thirty (30) foot sight triangle measured from the point of curvature of the intersecting street curbs.
- 7) Notwithstanding any other provision of this Ordinance, no sign may be placed in a manner as to impede vision within a twenty-four (24) foot sight triangle of the intersecting curb line of a driveway, entrance, or exit. This triangle may be increased by the Planning Director when deemed necessary for traffic safety.
- 8) Only one portable sign may be placed upon a property or development complex site at any given time, except in the case of multiple tenant sites consisting of six (6) or more businesses/uses, where two (2) portable signs will be allowed on the parcel at any given time.
- 9) All portable signs must be kept in good repair and in proper state of maintenance, including, but not limited to replacing lamps, replacing or repairing the sign face, replacing trim, etc. If the Planning Director finds that a sign is not in a proper state of repair, the City may after thirty (30) days of written notification, not issue a permit for the specific sign for any location.
- 10) In installing or removing the portable signs, access can not be across a boulevard, sidewalk or bikepath, unless an established driveway is present and used.

B. High Impact Signs - Prior to the placement of a high impact sign, a high impact sign permit must be obtained from the City of West Fargo Planning Office. A high impact sign permit may be granted for a period not to exceed five (5) consecutive days at a given site for a business use and no more

than twenty-one (21) total days within one calendar year. High impact sign permits shall be issued providing the following:

- 1) The high impact sign is located in a Commercial (C, CM, or PUD), Industrial (CM, M, or PUD), or Public Facilities (P) Zoning District.
- 2) The high impact sign is located upon the same parcel which the advertisement/notice is intended, unless advertising a community-wide event, as determined the Planning Director.
- 3) No high impact sign may be placed upon the public right-of-way without approval of the City Commission. Portable signs shall meet the setback requirements for freestanding signs for Corridor Overlay Districts and underlying zoning districts.
- 4) No high impact sign placed within one hundred (100) feet of an area zoned for residential use may have blinking, flashing or fluttering lights or other illuminating devices that have a changing intensity, brightness or color.
- 5) No part of a high impact sign may be located within the thirty (30) foot sight triangle measured from the point of curvature of the intersecting street curbs.
- 6) Notwithstanding any other provision of this Ordinance, no sign may be placed in a manner as to impede vision within a twenty-four (24) foot sight triangle of the intersecting curb line of a driveway, entrance, or exit. This triangle may be increased by the Planning Director when deemed necessary for traffic safety.
- 7) Only one high impact or portable sign may be on a property or business site during any given period, except that multiple tenant sites may have up to two (2) portable signs or high impact signs, or a combination thereof, during any given period, provided the content of the sign changes for each business per the regulations outlined in this section.
- 8) In installing or removing the high impact signs, access can not be across a boulevard, sidewalk or bikepath, unless an established driveway is present and used.

11. No sign or sign structure shall be closer to any side lot line than a distance equal to one-half (1/2) the minimum required yard setback. Nor shall any sign project onto any public street or alley or approved private street. No sign shall be placed within any drainage or utility easement.
12. No sign or sign structure shall be erected or maintained that prevents free ingress or egress from any door, window or fire escape. No sign or sign structure shall be attached to a standpipe or fire escape.
13. A freestanding sign or sign structure constructed so that the faces are not back to back, shall not have an angle separating the faces exceeding twenty (20) degrees unless the total area of both sides added together does not exceed the maximum allowable sign area for that district.
14. Signs in residential districts and signs facing residential districts shall not be illuminated unless approved as a conditional use.
15. Except for farm buildings, at least one (1) address sign identifying the correct property number as assigned by the City shall be required on each principal building in all districts. The number shall be at least three (3) inches in height.
16. Illegal signs which are located anywhere within any portion of any public right-of-way may be confiscated without notice by any City Official or agent. These signs may be recovered by the owner upon payment of a fine as imposed by the City Commission.
17. Reader boards, off-premise, and other signs, whether electronic, digital or other, shall be reviewed by various City departments to determine if such sign may create a nuisance or traffic hazard because of lighting glare, focus, animation or flashing. Visual nuisance or traffic hazard effects may be minimized through the use of static images or message (no flashing or scrolling messages), time sequencing of images or messages, i.e., 8 second standard changes and reduced intensity in lighting. In the event that such sign is determined to potentially constitute a nuisance or traffic hazard, the sign shall be reviewed as a conditional use.

Source: Ord. 916, Sec. 50 (2012); Ord. 1049, Sec. 40 (2015)

4-460.8. SIGNS NOT REQUIRING PERMIT AND PROHIBITED SIGNS.

1. Permitted Signs. The following signs are allowed without a permit; however are included within the allowable sign area, unless otherwise indicated.

- a. Public Signs. Signs of a public, noncommercial nature, including safety signs, directional signs to public facilities, trespassing signs, traffic signs, signs indicating scenic or historical points of interest, memorial plaques and the like, when erected by or on behalf of a public official or employee in the performance of official duty.
- b. Identification Signs. Identification signs not exceeding one (1) square foot for single and two-family structures and sixteen (16) square feet for multiple family structures.
- c. Informational Signs. Informational Signs not exceeding twenty-four (24) square feet. One informational sign shall be allowed for each business and is not included within the allowable sign area, provided it does not exceed twenty-four (24) square feet and is fastened to an existing sign structure or building, or is a menu board for a restaurant.
- d. Directional Signs.
 - (1) On-Premise Signs. Shall not be larger than four (4) square feet. The number of signs shall not exceed four (4) unless approved by the Planning and Zoning Commission, and shall not be included within the allowable signage.

Source: Ord. 704, Sec. 3 (2004)

- (2) Off-Premise Signs. Shall be limited to situations where access is confusing and traffic safety could be jeopardized or traffic could be inappropriately routed through residential streets. The size of the sign shall be approved by the City Commission and shall contain no advertising.
- e. Integral Signs. Integral signs shall not be included within the allowable sign area.
- f. Campaign Signs. Campaign signs not exceeding thirty-two (32) square feet for any one sign, or for all signs on any lot. The sign must contain the name and address of the person responsible for such sign, and that person is responsible for its removal.
- g. Flags and Insignia. Flags and insignia of any government except when displayed in connection with commercial promotion.

- h. Holiday Signs. Signs or displays which contain or depict a message pertaining to a religious, national, state or local holiday and no other matter, and which are displayed for a period not to exceed forty-five (45) days in any calendar year.
- i. Construction/Development Signs. A non-illuminated construction or development sign confined to the site of the construction, alteration, repair or development. Such sign must be removed within two (2) years of the date of issuance of the first building permit on the site or when the particular project is completed, whichever is sooner, unless said sign is intended to be a permanent identification sign for the development and is approved as a conditional use. One sign shall be permitted for each street the project abuts. No sign may exceed thirty-two (32) square feet in the R-1E, R-1A, R-1, R-4 and R-5 Districts, or sixty-four (64) square feet in the A, R-2, R-3, C, CM and M districts unless otherwise approved as a conditional use.
- j. Roadside Market Signs. Signs advertising produce grown and sold on the premises on which they are located, provided such signs shall not exceed thirty-two (32) square feet in area or be displayed for a period exceeding six (6) months of any calendar year.
- k. "For Sale" and "To Rent" Signs. "For Sale" and "To Rent" signs shall be permitted subject to the following regulations:
 - (1) Six (6) or Less Residential Dwelling Units. The following applies to the for sale or for rent of a single family residence or where six (6) or less dwelling units (or lots for residential development) are for sale or rent: No more than one such sign per lot, except on a corner lot (2) signs, one facing each street, shall be permitted. No such signs shall exceed sixteen (16) square feet in area, or be illuminated. Each such sign must be devoted solely to the sale or rental of the property being offered and must be removed immediately upon the sale or rental of the property. Each sign must be placed only upon the property offered for sale or rent.
 - (2) Seven (7) or More Residential Dwelling Units. Where more than six (6) dwelling units (or lots for residential development purposes) are offered for sale or rental by the same party,

signs advertising such sale or rental may be constructed therefore in any district. There shall be permitted one sign facing each public street providing access to the property being offered. Each such sign shall not exceed twenty-four (24) square feet in area; shall be located at least one hundred (100) feet from any preexisting home; and shall be removed within one year from the date of building permit issuance, or when less than six (6) units remain for sale or rent, whichever is less. Said sign shall fully comply with the setback requirement for the zoning district in which the property is located.

- (3) Industrial or Commercial Property. In the event of an industrial or commercial sale or rental of real property, there shall be permitted one sign facing each public street providing access to the property being offered. Each sign shall not exceed thirty-two (32) square feet in area for signs located within fifty (50) feet of the front property line, or sixty-four (64) square feet in area if located fifty (50) or more feet from the front property line and must be devoted solely to the sale and rental of the property being offered and must be removed immediately upon the sale or rental of the last property offered at that location. Said sign may not be located closer to the property line than fifty (50) percent of the setback required within the particular zoning district in which the property is located.

- 1. Rummage (Garage) Sale Signs. Rummage sale signs shall not be posted until one day before the date of the sale and shall be removed within one (1) day after the end of the sale and shall not exceed six (6) square feet. Rummage sale signs shall not be located in any public right-of-way, or on utility poles or equipment.
- m. Signs relating to official local, state or federal government agencies and City entrance signs.
- n. Window Signs. Window signs shall not exceed fifty (50) percent of the total glass area of the face of the building on which the window in which they are displayed and shall not be included within the allowable sign area.

- o. Small Signs. Small signs which do not exceed one (1) square foot in area shall not be counted as part of the allowable sign area, provided the signs are not part of a larger sign scheme for the building or property.
- p. Pennants. Pennants may be erected on the premises of an establishment in commercial and industrial zoning districts which are not in the "Corridor Overlay District. Pennant displays must be properly maintained as to not create a safety hazard, nor shall they detract from the character of adjacent properties and other property in the district. The rope, wire or string used to display the pennants must be fastened securely and remain taut.

Source: Ord. 704, Sec. 5 (2004)

2. Prohibited Signs. The following signs are prohibited:

- a. Off-Premise Advertising Signs with the following exceptions:
 - (1) Approved signs within a commercial or industrial planned unit development, advertising businesses within the PUD.
 - (2) Signs as provided for in the district provisions.
- b. Advertising or business signs on or attached to equipment such as semi-truck trailers or motor vehicles where signing is a principal use of the equipment on either a temporary or permanent basis. Such signs may be used for special events on site and may not be displayed for more than fourteen (14) calendar days within any four (4) month period.

Source: Ord. 702, Sec. 3 (2004)

- c. Beacon, motion and flashing signs, except reader boards, time and temperature signs and barber poles.
- d. Roof Signs. Except that a business sign may be placed on the fascia or marquee of a building, provided it does not extend above the highest elevation of the building, excluding chimneys.
- e. Business signs which advertise an activity, business, product or service no longer produced or conducted on the premises upon which the sign is located. Where the owner or lessor of the premises

is seeking a new tenant, such signs may remain in place for not more than thirty (30) days from the date of vacancy.

- f. Wall Graphics.
- g. Portable signs, banners, inflatable signs, tethered balloons and similar devices except as provided in this chapter.
- h. Signs which are tacked on bridges, fire hydrants, official public signs, trees, fences, utility poles or in any portion of a public right-of-way; temporary signs fastened to sign structures, parking lot light poles or other structures; and temporary signs secured by wires, stakes or weights.
- i. Bench signs except by special permit of the City Commission.
- j. Home occupation signs except as part of an identification sign for the residence, which does not exceed one (1) square foot in area and is mounted flush against the buildings.
- k. Pennants within the "Corridor Overlay District."

Source: Ord. 704, Sec. 4 (2004)

4-460.9 GENERAL DISTRICT REGULATIONS.

1. Agricultural and Residential Districts.

- a. Institutional Identification. Except as provided for as a conditional use, only one (1) sign per street frontage for the principal use, and the sign area may not exceed thirty-two (32) square feet with a maximum height of eight (8) feet for freestanding signs. There shall be fifteen (15) feet for the front yard setback and ten (10) feet for the side yard setback on a corner lot.
- b. Residential Area Identification. One (1) sign for each exclusive entrance to the development not exceeding thirty-two (32) square feet, or two signs not exceeding sixteen (16) square feet each. Signs are limited to a maximum height of eight (8) feet for freestanding signs.
- c. Conditional Use Identification. Only one (1) sign for a conditionally permitted use, which is the primary use of the property, unless otherwise approved as part of a public review for a

conditional use. The sign area may not exceed thirty-two (32) square feet with a maximum height of eight (8) feet for freestanding signs. Uses with more than one street frontage may be allowed an additional sign of same size and height, provided it is approved as part of the conditional use application.

- d. Increase in signage. Additional signage may be considered by the City as a conditional use, subject to following the conditional use procedures established by the City.

2. "C," "HC," "LI" and "M" Districts.

Source: Ord. 1045, Sec. 5 (2015); Ord. 1049, Sec. 41 (2015); Ord. 1097, Sec. 1 (2017)

- a. Sign Allocation Plan. A sign allocation plan shall be established by the developer or property owner for multi-tenant buildings to provide for the desired allocation of signage. When buildings are expanded and/or tenants added, a revised plan shall be established. Sign allocation plans shall take into consideration the total buildable area of the property and provide for an equitable distribution of signage to tenants based on the percentage of leasable floor area for each tenant. Anchor tenants may be assigned up to ten (10) percent more signage than the distribution formula would provide for with smaller tenants receiving proportionally less. Plans shall be submitted to the City for administrative review and approval.
- b. Single or Multiple Occupancy Business Signs. The total sign area for the subject property may not exceed two (2) square feet for every one (1) foot of lot frontage on a public or approved private street. On corner lots the longest frontage may be used. Signs chosen to comprise the total sign area shall be consistent with the following provisions:
 - (1) Freestanding. Not more than one (1) sign per 50,000 square feet of floor area; however, on corner lots two (2) freestanding signs are allowable, one (1) per frontage. Total individual business sign area may not exceed one hundred (100) square feet nor exceed a maximum height of thirty-five (35) feet. The sign area may be increased to one hundred fifty (150) square feet provided the sign is set back a minimum of twenty (20) feet from the street right-of-way in front. Multiple tenant signs on a freestanding sign structure may not exceed one hundred fifty (150) square feet, except that if a setback of twenty (20)

feet from the street right-of-way in front is provided, the total signage may be increased to two hundred (200) square feet.

- a. Freestanding Signs on Main Avenue. Main Avenue is recognized as a unique, established business highway corridor with properties distanced from the main roadway travel lanes in some areas by either frontage roads or by increased boulevards with landscaping. To provide for more equitable visibility of signage, total individual business sign area may be increased subject to review as a conditional use, but not to exceed one hundred fifty (150) square feet, nor exceed a maximum height of thirty-five (35) feet without the previously stated setback requirement of twenty (20) feet from the street right-of-way if it can be determined that the existing site has adequate separation provided by either frontage road or an increased boulevard of Main Avenue. Multiple tenant signs on a freestanding sign structure may be increased subject to review as a conditional use, but not to exceed 200 square feet nor exceed a maximum height of thirty-five (35) feet without the previously stated setback requirement of twenty (20) feet from the street right-of-way if it can be determined that the existing site has adequate separation provided by either frontage road or an increased boulevard of Main Avenue.
- (2) Wall, Canopy or Marquee. Not more than one sign for each ten (10) feet of lot frontage. Sign area may not exceed fifteen percent (15%) of the building facade up to a maximum of one hundred (100) square feet per sign for buildings with a setback of less than one hundred (100) feet and up to a maximum of two hundred (200) square feet per sign for buildings with a setback of one hundred (100) feet or more.
- c. Modified Sign Development Plan. Parcels which are unusual in dimensions (large parcels with limited frontage) may have a modified sign development plan considered as a conditional use, particularly if the property is intended to be developed with multi-tenant building(s) and the allowable signage is very limited.

- d. Off-premise signs are allowed in "HC": Heavy Commercial, "LI": Light Industrial, and "M": Heavy Industrial Districts. No off-site sign shall exceed seven hundred fifty (750) square feet in area. No two off-site signs may be placed less than two hundred fifty (250) feet apart, unless said signs are separated by buildings or other obstructions in such a manner that only one sign is visible from the roadway at any time.

3. "P" Public Facilities District.

- a. For such facilities occupying an area of five (5) acres or more, an identification sign not larger than ninety-six (96) square feet, or two (2) signs not to exceed forty-eight (48) square feet may be permitted. Signs shall be of a wall, canopy, marquee or freestanding variety. Freestanding signs are limited to a maximum height of eight (8) feet, except that the height of a sign may be increased one (1) foot up to (10) additional feet for each two (2) feet of front yard setback provided beyond the minimum and for each four (4) feet of side yard setback provided beyond the minimum.
- b. As a conditionally permitted use, off-premise signs may be allowed. The City may impose height and other size requirements, as well as other requirements deemed necessary by the City to have such signs fit into the area in which they are proposed to be established.

Source: Ord. 916, Sec. 51 (2012)

- 4. "PUD" Districts. In "Planned Unit Development" Districts, sign restrictions shall be based upon the individual uses and structures contained in the development. Signs shall be in compliance with the restrictions applied in the most restrictive zoning district in which the use is allowed. Signs considered to be off-premise signs must meet the requirements set forth above for on-premise signs for the most restrictive zoning district in which the use is allowed, must be limited to advertising businesses located within the same PUD District, and the off-premise signs must be a permissive use in the PUD District.
- 5. "CO" District. In addition to the sign restrictions stated above, the following restrictions shall apply:
 - a. In underlying Agricultural and Residential Districts, no sign shall be permitted except as may be allowed as a conditional use, in which case signage shall conform to whatever restrictions may be imposed by the City Commission in authorizing the conditional use permit; however, in no case

shall the requirements be less restrictive than those set forth in the subsection below.

- b. In underlying Commercial Districts: On-Premise Signs shall be permitted according to the following provisions:

(1) Number: In structures with multiple occupancy and individual outside entrances (retail centers), each tenant can have its own wall signs; however, a common monument or freestanding sign is intended to serve the needs of all the tenants in the structures.

(2) Height: Freestanding signs shall conform to the following formula:

$$\text{Max. Height (ft)} = \text{Frontage on designated street}/10 + \text{Sign Setback}/2$$

with no freestanding sign exceeding twenty-five (25) feet in height, except that the height of a sign may be increased one (1) foot, up to ten (10) additional feet, for each two (2) feet of setback provided beyond the minimum.

(3) Minimum Setback: There shall be fifteen (15) feet front yard sign setback for all those properties abutting the designated streets. For those properties abutting other roadways, yard sign setbacks along the roadways shall be five (5) feet.

(4) For premises without frontage on the designated streets, the height and area of signs shall be determined by the amount of frontage on other public or approved private streets.

- c. In underlying PUD District, on-premise signs shall be permitted according to the provisions of the underlying district and the provisions of this section, the most restrictive provisions prevailing. Off-premise signs in the underlying PUD District must meet the requirements set forth above for on-premise signs, must be limited to advertising businesses located within the same PUD District, and the off-premise signs must be a permissive use in the PUD District.

6. "CO-I" District. In addition to the sign restrictions stated above for underlying districts, identification or institutional wall signs may be increased in area as a conditional use to a maximum of 300 square feet in area, provided the following criteria are met:
 - a. The structure on which the wall sign is mounted shall be set back a minimum of 400 feet from public street or Interstate 94 right-of-way lines.
 - b. The structure is at least 100,000 square feet in area.
 - c. No freestanding signs are utilized on the property.
 - d. Only two wall signs are allowed, one for each of two sides.

Source: Ord. 910, Sec. 1 (2011)

4-460.10 SPECIAL DISTRICT REGULATIONS

1. Motor Fuel Stations. Signs for motor fuel stations shall be regulated by the business structure sign provisions for the zoning district in which the station is located. In addition, motor fuel stations may also display signs which identify current fuel prices and car wash facilities. Such signs shall be limited to a maximum size of twenty-four (24) square feet and a maximum height of ten (10) feet each. One fuel price sign and one car wash sign for any motor fuel station shall not be included within the allowable signage provided the size and height restrictions are met. Customer information and advertising provided on fuel dispensing units shall not be regarded as signage.
2. Additional Signage in Lieu of Freestanding Pylon Signs in the Commercial and Industrial Zoning Districts. When a commercial or industrial building elects to construct a monument style sign in lieu of a pylon sign, or where no freestanding sign is used, the maximum property sign percentage limitation for sign area may be increased five (5) percent. Monument style signs shall be a maximum of one hundred (100) square feet in area for other commercial and industrial districts, and shall be located in such a manner as to avoid conflicts with traffic visibility.

4-460.11. INSPECTION. All signs for which a permit is required shall be subject to inspection by the Zoning Administrator and Building Administrator. The Zoning Administrator or Building Administrator may order the removal of any sign that is not maintained in accordance with the maintenance provisions of this Chapter.

4-460.12. PERMIT, APPLICATION, VARIANCE AND COMMISSION APPROVAL.

1. Except as provided in Section 4-460.8 of this chapter, it is unlawful for any person to erect, construct, alter, rebuild or relocate any sign or structure until a permit has first been issued by the City.
2. Sign Application. The following information for a sign permit shall be supplied by the applicant if requested by the City.
 - a. Name, address and telephone number of person making application.
 - b. Name, address and telephone number of person owning sign.
 - c. A site plan to scale showing the location of lot lines, building structures, parking area, existing and proposed signs and any other physical features. All signs on the property shall be shown.
 - d. Plans, location and specifications and method of construction and attachment to the buildings or placement method in the ground.
 - e. Copy of stress sheets and calculations showing that the structure is designed for dead load and wind pressure in any direction in the amount required by this and all other laws and City Code provisions.
 - f. Written consent of the owner or lessee of any site on which the sign is to be erected.
 - g. Any electrical permit required and issued for the sign.
 - h. Such other information as the City shall require to show full compliance with this and all other laws and City Code provisions.
3. Permit Issued if Application is in Order. The Zoning Administrator and Building Administrator, upon filing of an application for a permit, shall examine such plans, specifications and other data and the premises upon which it is proposed to erect the sign. If it appears that the proposed structure is in compliance with all requirements of this chapter and all other laws and the City Code provisions, the permit shall be issued. If the work authorized under a permit has not been completed within sixty (60) days after the date of issuance, the permit shall be null and void.
4. City Commission Approval. When this Chapter requires City Commission approval for a sign, the application

shall be processed in accordance with the procedural and substantive requirements of the Zoning Chapter for a conditional use permit.

5. Variances. The City Commission may, upon application, grant a variance from the terms of this chapter. The request for a variance shall be processed in accordance with the procedural and substantive requirements of the Zoning Chapter.
6. Fees. Fees for review and process of sign permit applications and variance requests shall be imposed in accordance with the fee schedule established by Commission resolution.
7. Licenses for Portable or High Impact Signs. It shall be unlawful for any person, firm or entity to display a Portable Sign or High Impact Sign within the zoning jurisdiction of the City of West Fargo without first having obtained a license for such purpose. A license for the owner of the sign shall be approved by the City Commission annually. Said license shall terminate on December 31st of the permitting year. License fees shall be imposed in accordance with the fee schedule established by Commission resolution.
 - a. Suspension or Non-renewal of License. The license granted under this section may be suspended or revoked for violation of any of the provisions of the West Fargo Sign Regulations as follows:
 - 1) Initial Violation - Warning. Upon a finding by the Planning Director of an initial violation of the West Fargo Sign Ordinance, a warning by written notice shall be given by the Planning Director that the licensee's license is subject to a fine and license suspension if a subsequent violations occur within a period of twelve (12) months from the date of violation of the first offense.
 - 2) Second Violation. Fine. Upon a finding by the Planning Director of a second violation of the West Fargo Sign Ordinance within 12 months from the first violation, a written notice shall be given to the licensee by the Planning Director and an administrative fine of \$200.00 imposed. The licensee shall have a period of thirty days to make payment from the date of the notice.
 - 3) Third Violation. License Suspension. Upon a finding by the Planning Director of a third violation of the West Fargo Sign Ordinance within 12 months from the first violation, a written notice shall be given to the licensee

by the Planning Director establishing a date, time and place for a hearing before the City Commission. The purpose of the hearing is for the licensee to show cause why licensee's license shall not be suspended for a period of sixty days from the date of the Commission's order finding a third violation within 12 months of the first violation.

- 4) Fourth Violation - Suspension. Upon a finding by the Planning Director of a fourth violation of the West Fargo Sign Ordinance within 12 months from the first violation, a written notice shall be given to the licensee by the Planning Director establishing a date, time and place for a hearing before the City Commission. The purpose of the hearing is for the licensee to show cause why licensee's license shall not be suspended for a period of one year from the date of the Commission's order finding a fourth violation within 12 months of the first violation.
- 5) Once revoked, a licensee may not renew his/her license for a period of twelve months from the date of revocation.
- 6) Nothing in this section shall limit the authority of the City Commission to impose a fine or penalty or to revoke or to cause a forfeiture of a license.

Source: Ord. 702, Sec. 4 (2004)

4-460.13. ENFORCEMENT. This chapter shall be administered and enforced by the Zoning Administrator and Building Administrator. The Zoning Administrator and Building Administrator may institute in the name of the City appropriate actions or proceedings against a violator.

4-460.14. VIOLATION MISDEMEANOR. Every person violates a section, subdivision, paragraph or provision of this chapter when that person performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provision hereof.

4-470. NONCONFORMING LOTS, USES OF LAND, STRUCTURES, AND USES OF STRUCTURES.

Subsections:

- 4-471. Intent.
- 4-472. Nonconforming Lots of Record.
- 4-473. Nonconforming Uses of Land (or Land with Minor Structures Only).
- 4-474. Nonconforming Structures.
- 4-475. Nonconforming Uses of Structures or of Structures and Premises in Combination.
- 4-476. Repairs and Maintenance.
- 4-477. Uses Allowed as Conditional Uses Not Nonconforming Uses.

4-471. INTENT. Within the districts established by this Ordinance or amendments that may later be adopted there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

4-472. NONCONFORMING LOTS OF RECORD. In any district in which single-family dwellings are permitted, a single-family

dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained through action of the Board of Adjustment. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width and the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this Ordinance.

4-473. NONCONFORMING USES OF LAND (OR LAND WITH MINOR STRUCTURES ONLY). Where at the time of passage of this Ordinance lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, and where such use involves no individual structure with a replacement cost exceeding \$1,000, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
2. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
3. If any such nonconforming use of land ceases for any reason for a period of more than 30 days, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located;
4. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

4-474. NONCONFORMING STRUCTURES. Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the

structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in any way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to the extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

4-475. NONCONFORMING USES OF STRUCTURES OR OF STRUCTURES AND PREMISES IN COMBINATION. If lawful use involving individual structures with a replacement cost of \$1,000 or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be allowed in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located. However, accessory buildings to residential uses may be enlarged, extended, constructed, reconstructed, moved or structurally altered provided that these improvements shall meet the yard and lot coverage requirements of the residential district, or in the case of accessory buildings located in commercial or industrial districts the lot coverage may not exceed fifty percent (50%) for buildings and may not exceed seventy-five percent (75%) impervious surfaces. Setback and building height requirements for accessory buildings located in commercial or industrial districts will follow the requirement of the C: Light Commercial District.

Source: Ord. 934, Sec. 1 (2012)

2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may as a conditional use be changed to another nonconforming use provided that the City Commission, either by general rule

or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate in the district than the existing nonconforming use. In permitting such change, the City Commission may require appropriate conditions and safeguards in accord with the provisions of this Ordinance;

4. Any structure, or structures and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;
5. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months or for 18 months during any three-year period (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located;
6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50 percent of the replacement cost at the time of destruction.

Source: Ord. 501, Sec. 12 (1996).

4-476. REPAIRS AND MAINTENANCE. On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding 25 percent of the current replacement cost of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

4-477. USES ALLOWED AS CONDITIONAL USES NOT NONCONFORMING USES. Any use which is allowed in a specific district as a conditional use shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.

CHAPTER 4-500.

ADMINISTRATION AND ENFORCEMENT

Sections:

- 4-510. Designated Administrator.
- 4-520. Schedule of Fees, Charges and Expenses.
- 4-530. Building Permits.
- 4-540. Amendments.
- 4-549. Provisional Use Permits [Source: Ord. 783, Sec. 16 (2006)]
- 4-550. Conditional Use Permits.
- 4-560. Board of Adjustment.
- 4-570. Violations: Remedies, Complaints and Penalties.

4-510. DESIGNATED ADMINISTRATOR. An administrative official designated by the City Commission shall administer and enforce this Ordinance. This person may be provided with the assistance of such other persons the City Commission may direct.

4-520. SCHEDULE OF FEES, CHARGES, AND EXPENSES. The City Commission shall establish a schedule of fees, charges and expenses and a collection procedure for building permits, zoning amendments, conditional use permits, appeals, and other matters pertaining to this Ordinance. The schedule of fees shall be on file in the Office of the West Fargo City Auditor, and may be altered or amended by the City Commission.

Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

4-530. BUILDING PERMITS.

Subsections:

- 4-531. Building Permits and Temporary Structure/Use Permits Required.
- 4-532. Application for Building Permit and Temporary Structure/User Permit, Plans Required.
- 5-533. Expiration of a Building Permit.
- 4-534. Construction and Use to be as Provided in Application, Plans and Permits.

4-531. BUILDING PERMITS AND TEMPORARY STRUCTURE/USE PERMITS REQUIRED. No building or other structure shall be erected, moved, added to, or structurally altered without a permit therefore, issued by the administrative official pursuant to Chapter 5 of the ordinances of the City of West Fargo. Temporary structures and/or uses must obtain a permit from the designated administrative official(s). Temporary structures and/or uses shall include but not be limited to the following: Greenhouses; plant and produce stands; sales tents, trailers or other structures used to sell goods and services; model home sales offices; coffee huts; on-site storage tents and/or trailers to house inventory during construction or other unusual business interruptions; seasonal sales such as Christmas trees; temporary office trailers for construction sites; and certain storage containers meeting specific requirements for a limited period of time. Temporary structures and/or uses exempt from permits include the following: Fundraising events for public or nonprofit organizations; yard and garage sales lasting no longer than three days; auction sales; sale of fireworks conducted between June 25th and July 7th only; and City sponsored community events. Temporary structures or uses shall be located on property which is appropriately zoned. No permit shall be issued except in conformity with the provisions of this Chapter.

Source: Ord. 501, Sec. 13 (1996); Ord. 916, Sec. 52 (2012); Ord. 1049, Sec. 42 (2015).

4-532. APPLICATION FOR BUILDING PERMIT AND TEMPORARY STRUCTURE/USE PERMIT, PLANS REQUIRED. All applications for building permits and temporary structure/use permits shall provide the desired dates of operation of the temporary structure/use and be accompanied by plans in duplicate when required by the administrative official(s). Plans shall be drawn showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building(s) or alteration. The application shall include such other information as lawfully may be required by the administrative official(s), including existing or proposed building(s) or alteration(s); existing or proposed uses of the building and land; existing or proposed parking; location and type of boulevard trees and other landscaping which may be required by subdivision landscape plans

and/or Corridor Overlay District or Interstate Corridor Overlay District; the address and/or legal description of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with the City's plans and ordinances; and provide for the enforcement of this Ordinance.

The application and plans shall be submitted to the Office of the City Planner who will coordinate review of the application and plans with the appropriate City departments and agencies. Following review by City departments and agencies, the City Planner will submit the application and plans, along with any recommendations to the City Commission for consideration. The City Commission may grant a permit for a temporary structure or use for a defined period of time, provided; however, that the permit may not be for a period longer than twelve (12) months. An applicant may re-apply for a temporary structure/use permit following the same procedures as prescribed above.

One copy of the plans shall be returned to the applicant by the City Planner following City Commission consideration after s/he shall have marked such copy as either approved or disapproved along with any conditions of approval or reasons for denial, and attested to the same by his/her signature on such copy. The second copy of the plans, similarly marked, shall be retained by the administrative official. If a building permit is refused, the administrative official shall state the reasons for such refusal in writing.

In addition to the requirements set out above, a tree planting fee shall be paid to the City of West Fargo prior to building permit issuance for construction on lots. Such fee shall cover the cost of planting trees on the boulevard of the size, number and species as required according to the City's adopted Landscape Standard, approved subdivision landscape plans, Corridor Overlay District, or Interstate Corridor Overlay District. The Building Inspector or the City Planner shall notify the City Auditor of the number of trees required for each building permit.

The City Auditor shall annually obtain a bid from a nursery or other qualified person or entity for the cost of purchasing and planting trees pursuant to this section. The applicant shall pay to the City that amount which is necessary to purchase and plant trees of the number and species as required by the City. If alternative species are available for selection, the applicant may choose from those alternatives available but in no case shall more than forty (40) percent of one species be planted within a subdivision. The applicant shall then be required to pay that amount required for the variety of tree(s) selected. After construction is complete, the applicant or owner shall inform the City Auditor or his designee that the trees may be planted. The trees shall be planted as soon as possible after said notice, but in no event shall trees be planted at times or under weather conditions in which trees are not normally planted in this area.

Upon completion of construction for the project, the property owner is responsible for the lot to be graded according to the approved subdivision drainage plan. Lots shall be seeded or sodded within one year of issuance of the building permit unless otherwise approved by the City Planner.

SOURCE: Ord. 444, Sec. 1 (1992); Ord. 916, Sec. 53 (2012); Ord. 1049, Sec. 43 (2015).

4-533. EXPIRATION OF A BUILDING PERMIT. If the work authorized by any building permit is not commenced within one hundred and twenty (120) days, or if construction or work is suspended or abandoned for a period of 120 days at any time after work is commenced, said permit shall be null and void. It shall be cancelled by the administrative official and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained.

4-534. CONSTRUCTION AND USE TO BE AS PROVIDED IN APPLICATION, PLANS AND PERMITS. Building permits issued on the basis of plans and application approved by the administrative official authorize only the use, arrangement, and construction set forth in such approved plans and application, and no other use, arrangement or construction. Use, arrangement, or construction at variance with that authorized shall be a violation of this Ordinance.

4-540. AMENDMENTS.

Subsections:

- 4-541. Intent.
- 4-542. Public Hearing Required.
- 4-543. Who May Initiate.
- 4-544. Application Required.
- 4-545. Review by Planning and Zoning Commission.
- 4-546. Action by City Commission.

4-541. INTENT. The regulations, restrictions, and boundaries set forth in this chapter may from time to time be amended, supplemented, changed or repealed by the West Fargo City Commission.

4-542. PUBLIC HEARING REQUIRED. No amendment, supplement, change or modification of this Chapter shall be made by the City Commission until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of said hearing shall be published once a week for two successive weeks prior to the time set for said hearing in the official newspaper of the city. Such notice shall contain the following items:

1. The time and place of the hearing.
2. A description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.
3. A description of the nature, scope, and purpose of the proposed amendment (regulation, restriction, or boundary).
4. A statement of the times at which it will be available to the public for inspection and copying at the Office of the City Auditor.

4-543. WHO MAY INITIATE. Either the Planning and Zoning Commission or the City Commission may initiate an amendment. A property owner or representative of the property owner may request a rezoning if it applies to his/her property.

4-544. APPLICATION REQUIRED. If a property owner or representative of the property owner wishes to request an amendment, s/he shall fill out an application, copies of which are available at the City Planning Office. No application for a rezoning of a particular piece of property shall be accepted more than once in any twelve (12) month period except if the prior application was withdrawn before action was taken by the City Commission, or if the Planning and Zoning Commission determines that the circumstances surrounding a previous application for a

rezoning has changed. The application shall be filed with the City Planner who shall refer the application together with his/her comments thereon to the Planning and Zoning Commission. Applications for rezoning property which has not been previously platted shall be required to plat the property in accordance with Ordinance 4-04.

Source: Ord. 501, Sec. 14 (1996).

4-545. REVIEW BY PLANNING AND ZONING COMMISSION. No amendment, supplement, change or modification of this Ordinance shall be made by the City Commission without first the consideration of each by the Planning and Zoning Commission. Following a public hearing before and consideration by the Planning and Zoning Commission, the Commission shall submit in writing its recommendations on each amendment, supplement, change or modification to the City Commission within sixty (60) days after receipt thereof. Said recommendations shall include approval, disapproval or other suggestions and the reasons thereof, and a discussion of the effect of each amendment, supplement, change or modification on the Comprehensive Plan. Said recommendation shall be of an advisory nature only.

4-546. ACTION BY CITY COMMISSION. After receipt of the recommendation on any amendment from the Zoning Commission, or in any event of the failure of the Zoning Commission to so report, within ninety (90) days from the time of referral of the proposed amendment to the Zoning Commission, the Board of City Commissioners shall hold a public hearing, after which the proposed amendment may be passed. If a protest against a change, supplement, modification, amendment, or repeal is signed by the owners of twenty per cent or more:

1. Of the area of the lots included in such proposed change; or
2. Of the area adjacent, extending one hundred fifty feet (45.72 meters) from the area to be changed, excluding the width of streets or other public right-of-way, the amendment shall not become effective except by the favorable vote of three-fourths of all the members of the City Commission. All protests must be filed with the City Auditor, in writing, prior to the time set for the hearing.

Upon establishment of any regulation, restriction, or boundary hereunder the governing body of West Fargo shall file a certified copy thereof with the City Auditor and shall cause notice of the same to be published in the official newspaper of the City. Said notice shall describe the nature, scope, and purpose of the regulation, restriction, or boundary, and shall state the times at which it will be available to the public for inspection and copying at the Office of the City Auditor.

4-549. PROVISIONAL USE PERMITS.

Source: Ord. 783, Sec. 16 (2006)

Subsections:

- 4-549.1. Intent.
- 4-549.2. Who May Apply.
- 4-549.3. Application Required.
- 4-549.4. Public Notification and Administrative Review.
- 4-549.5. Planning and Zoning Consideration.
- 4-549.6. Termination of Provisional Use Permit.

4-549.1. INTENT. The provisions of this section are intended to permit certain land uses which are generally considered to be compatible with the uses permitted by right in a zoning district, and desirable to the development of the City as a whole, provided specific provisions are met to minimize the use's affects on neighboring properties. The specific provisions to be met shall be stated within the zoning district.

4-549.2. WHO MAY APPLY. A property owner or representative of the property owner may request a provisional use permit if it applies to his/her property.

4-549.3. APPLICATION REQUIRED. To request a provisional use permit, a property owner or his/her authorized representative shall fill out an application, copies of which are available in the City Planning Office, together with a site plan of the property and other pertinent information needed to complete the administrative review.

4-549.4. PUBLIC NOTIFICATION AND ADMINISTRATIVE REVIEW. The City Planning Office shall notify the property owners of any adjoining properties, as well as those properties directly across any public street in front of or on the side of the provisional use property. If no objections are received from the property owners within ten (10) days from the date notices are sent out, the Planning Office may complete the administrative review and issue the provisional use permit. The administrative review shall consist of review of the application and site plan to insure compliance with the zoning district provisions and other zoning ordinance requirements.

Source: Ord. 916, Sec. 54 (2012)

4-549.5. PLANNING AND ZONING COMMISSION CONSIDERATION. The Planning and Zoning Commission shall review the application for a provisional use permit only when requested by the applicant following City Planning Department disapproval of the application, or upon written opposition by twenty-five percent (25%) or more of the property owners of any adjoining properties, as well as those properties directly across any public street in front of or on the side of the provisional use property. The application shall be

reviewed at the next regular meeting of the Planning and Zoning Commission following notification to the applicant and property owners. The Planning and Zoning Commission shall review all pertinent information to ascertain compliance with the specific standards governing the provisional use and to determine if the provisional use has significant opposition to not approve the use.

Source: Ord. 916, Sec. 55 (2012)

4-549.6. TERMINATION OF PROVISIONAL USE PERMIT. Provisional use permits are granted to the owner of the property and shall automatically terminate upon the sale or transfer of the property. A provisional use may be revoked with due cause following a hearing by the Planning and Zoning Commission.

Source: Ord, 916, Sec. 56 (2012)

4-550. CONDITIONAL USE PERMITS.

Subsections:

- 4-551. Intent.
- 4-552. Who May Apply.
- 4-553. Application Required.
- 4-554. Public Hearing and Notification.
- 4-555. Planning Commission Consideration.
- 4-556. Report to the City Commission.
- 4-557. Commission Action.
- 4-558. Amended Conditional Use Permits.

4-551. INTENT. The provisions of this section are intended to permit certain land uses which, under special conditions and review, can be compatible with the uses permitted by right in a zoning district, and desirable to the development of the City as a whole. Only those uses identified in the zoning district regulations are eligible for a conditional use permit under the procedure described below. A conditional use permit shall not be granted unless it meets the minimum standards and requirements of the applicable zoning district where permitted.

4-552. WHO MAY APPLY. Either the Planning Commission or City Commission may initiate a conditional use permit. A property owner or representative of the property owner may request a conditional use permit if it applies to his/her property.

4-553. APPLICATION REQUIRED. To request a conditional use permit, a property owner or his/her representative shall fill out an application, copies of which are available in the City Planning Office. No application for a conditional use permit of a particular piece of property shall be accepted more than once in any twelve (12) month period. The application shall be filed with the City Planner who shall determine whether the application meets all the submission requirements within thirty (30) days and if complete shall refer the application together with his/her comments thereon to the Planning Commission. The Planning Commission may require additional information when considering an application.

Source: Ord. 916, Sec. 57 (2012)

4-554. PUBLIC HEARING AND NOTIFICATION. No conditional use permit may be issued until after it is afforded a public hearing in accordance with the regulation set forth in Section 4-542 of this Chapter. In addition to this, the owners of all property situated wholly or partly within 350 ft. of the property lines in question shall be mailed or served notice at least ten (10) days in advance of the hearing. A copy of the notice and a list of the owners and

addresses to which the notice was sent shall be attested and made part of the records of the proceedings. A failure of any property owner to receive notice or failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings provided a bona fide attempt has been made to comply with all notice requirements.

4-555. PLANNING COMMISSION CONSIDERATION. Provided the applicant has furnished all information as requested by the City Planning Office, the Planning Commission shall consider the application at its next meeting provided the prescribed notification requirements can be met. The Planning Commission shall arrive at a recommendation within ninety (90) days of receipt of an application which meets all submission requirements. Before making a recommendation, the Planning Commission shall review the application for a conditional use permit to ascertain compliance with the specific standards governing individual conditional uses, and that satisfactory provision and arrangement has been made concerning the following, where applicable:

1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
2. Off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare or odor effects of the special exception on adjoining properties and properties generally in the district.
3. Refuse and service areas, with particular reference to the items in (1) and (2) above.
4. Utilities, with reference of locations, availability, and compatibility.
5. Screening and buffering with reference to type, dimensions, and character.
6. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.
7. Required yards and other open space.
8. Soil conditions, as they relate to on-site sewage disposal, water supply, basement excavating, road construction and related land use.
9. General compatibility with adjacent properties and other property in the district.

Source: Ord. 916, Sec. 58 (2012)

4-556. REPORT TO THE CITY COMMISSION. The Planning Commission shall make its recommendation to the City Commission. This recommendation shall be forwarded to the Commission for consideration at the Commission's next regular meeting.

4-557. COMMISSION ACTION. The City Commission shall arrive at a decision within sixty (60) days of the meeting at which the conditional use application was first considered by the Planning Commission. When it has been determined by the City Commission that such conditional use will promote the public health, safety, and welfare, and that such proposal is in general compatibility with adjacent or nearby land uses, the zoning code, and the City's comprehensive plan, the City Commission may authorize the Zoning Administrator to issue a conditional use permit. In authorizing this permit, the City Commission may impose such conditions it deems necessary, i.e. landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, signage, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements, to fulfill the purpose and intent of this Ordinance. Any conditions imposed by the Commission shall be attached to the conditional use permit and failure to comply with any condition in a conditional use permit shall be a violation of this Ordinance.

Source: Ord. 916, Sec. 59 (2012)

4-558. AMENDED CONDITIONAL USE PERMITS. An amended conditional use permit may be applied for and administered in a manner similar to that required for a new conditional use permit. Amended conditional use permits shall include reapplications for permits that have expired or have been denied, requests for substantial changes in conditions or expansions of use, and as otherwise described in this Ordinance. Applications for conditionally permitted uses which consist of multiple structures to be developed on the property shall include a conceptual development plan showing the structures proposed. The conditional use permit is approved for the use of the property which does not require an amendment each time a structure is proposed; however, once proposed development exceeds the approved conceptual development plan or if the characteristics of use change, an amended application shall be submitted for consideration.

Source: Ord. 916, Sec. 60 (2012)

4-560. BOARD OF ADJUSTMENT.

Subsections:

- 4-561. Establishment.
- 4-562. Proceedings of the Board of Adjustment.
- 4-563. Appeals; Notices; Hearings.
- 4-564. Stay of Proceedings.
- 4-565. Powers and Duties.
- 4-566. Requirements for Variances.
- 4-567. Decisions of the Board of Adjustment.
- 4-568. Cancellation of Variance.
- 4-569. Appeals from the Board of Adjustment.

4-561. ESTABLISHMENT. A Board of Adjustment is hereby established, which shall consist of five members to be appointed by the City Commission, each for a term of three years.

4-562. PROCEEDINGS OF THE BOARD OF ADJUSTMENT. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board. The City Auditor shall act as secretary to the Board of Zoning Adjustment and shall keep a record of all proceedings, but shall take no other part in the Board's deliberations.

4-563. APPEALS; NOTICES; HEARINGS. Appeals to the Board of Adjustment concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer or bureau of the governing body of the City affected by any decision of the administrative official. Such appeals shall be taken within a reasonable time, not to exceed 60 days or such lesser period as may be provided by the rules of the Board, by filing with the administrative official and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The administrative official shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.

The Board of Adjustment shall fix a reasonable time for the hearing of appeal, give due notice to the parties in interest, and

decide the same within a reasonable time. At any hearing, any party may appear in person or by agent or attorney.

4-564. STAY OF PROCEEDINGS. An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

4-565. POWERS AND DUTIES. The Board of Adjustment shall have the following powers and duties:

1. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, interpretation, or determination made by the administrative official in the enforcement of this Ordinance.
2. To authorize upon appeal in specific cases such variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

4-566. REQUIREMENTS FOR VARIANCES. A variance from the terms of this Ordinance, shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted demonstrating:
 - a. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district;
 - b. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
 - c. That the special conditions and circumstances do not result from the actions of the applicant;

- d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.

No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

2. The owner of the property for which a variance is sought or his/her agent and all abutting properties and properties extending one hundred and fifty (150) feet from the area, excluding streets, shall be notified at least 10 days prior to the hearing.
3. The Planning Commission shall hold a public hearing where interested parties shall have an opportunity to be heard. Notice of said hearing shall be published once a week for two successive weeks prior to the time set for said hearing in the official newspaper of the City. Following the hearing, the Planning and Zoning Commission shall forward their findings and recommendations to the Board of Adjustment.

Source: Ord. 916, Sec. 61 (2012)

4-567. DECISIONS OF THE BOARD OF ADJUSTMENT. In exercising the above mentioned powers:

1. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance.
2. The Board of Adjustment may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such other requirement, decision, or determination, and to that end shall have powers of the administrative official from whom the appeal is taken.
3. The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

4. The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
5. The Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 4-570 of this Ordinance.
6. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permitted under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
7. Variance requests for the same property shall not be heard within six (6) months of a previous request unless it can be demonstrated to the administrative official that the conditions for the variance has changed.

4-568. CANCELLATION OF VARIANCE. Unless otherwise specified by the Board of Adjustment at the time it is authorized, a variance shall expire if the applicant fails to utilize such variance within one (1) year from the date of its authorization. All variance which have been heretofore authorized and have not been utilized shall expire one (1) year from the effective date of this Ordinance unless utilized prior to such time.

4-569. APPEALS FROM THE BOARD OF ADJUSTMENT. Any person or persons, or any board, taxpayer, department, board or bureau of the city aggrieved by any decision of the Board of Adjustment may seek review by certiorari by district court of Cass County. The application for a writ of certiorari shall be made to the court within fifteen days after notice of the decision of the board, and such writ shall be returnable within twenty days after the rendition of such decision. The court may take such evidence as may be required to determine the questions presented. The supreme court, upon application filed within fifteen days after the determination of the district court, shall review the action of the district court by certiorari.

4-570. VIOLATIONS: REMEDIES, COMPLAINTS AND PENALTIES.

Subsections:

- 4-571. Public Nuisance Per Se.
- 4-572. Complaints Regarding Violations.
- 4-573. Enforcement.
- 4-574. Penalties for Violation.
- 4-575. Responsible Party.

4-571. PUBLIC NUISANCE PER SE. Any building or structure, or any use of premises or land which is in violation of any of the provisions of the zoning ordinances of the City of West Fargo, and is not a nonconforming structure or use, is hereby declared to be a public nuisance per se.

4-572. COMPLAINTS REGARDING VIOLATIONS. Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the administrative official. S/he shall record properly such complaint, immediately investigate, and take action thereon as provided by this Ordinance.

4-573. ENFORCEMENT. If the administrative official shall find that any of the provisions of this Ordinance are being violated, s/he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. S/he may order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or any other action deemed relevant by the administrative official. The notice shall provide a minimum of a thirty(30) day period in which to comply with the notice. The notice shall also state that the person or entity may appeal the order of the administrative official to the West Fargo Board of Adjustment by filing a written appeal within thirty (30) days of the receipt of the notice with the City Auditor, or the administrative official who executed the original notice. If the person or entity served with the original notice does not appeal within the thirty (30) day period nor comply with the order of the administrative official within the time set out in the notice, the administrative official should refer the matter to the City Attorney. The City Attorney may commence criminal proceedings in the West Fargo Municipal Court and/or commence civil proceedings to enjoin or abate the violation.

4-574. PENALTIES FOR VIOLATION. Any person violating any section of this title shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

Source: Ord. 928, Sec. 1 (2012)

4-575. RESPONSIBLE PARTY. The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may be found guilty of a separate offense and suffer the penalties herein provided.

TITLE V.

BUILDINGS

CHAPTERS:

- 5-01. International Building Code.
- 5-02. Dangerous Buildings.
- 5-03. Moving Buildings.
- 5-04. Flood Damage Prevention.
- 5-05. International Property Maintenance Code.
- 5-06. Alarm Systems.
- 5-07. International Residential Code.
- 5-08. International Existing Building Code.
- 5-09. International Energy Conservation Code. (2011)
- 5-10. Vacant Buildings. (Source: Ord. 1047, Sec. 1 [2015])

CHAPTER 5-01

INTERNATIONAL BUILDING CODE

Source: Ord. 737, Sec. 1 (2005); Ord. 877, Sec. 1 (2011)

SECTIONS:

- 5-0101. Adoption of International Building Code.
- 5-0102. Modifications of International Building Code.
- 5-0103. Penalty.
- 5-0104. Appeals

5-0101. Adoption of International Building Code. The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area, and maintenance of buildings or structures in the City of West Fargo, North Dakota, shall meet with the provisions of the rules and regulations of the 2015 edition of the International Building Code, of the International Code Council as the same are now established in said code, a copy of which is on file in the office of the building inspector for the City of West Fargo, with the exception of the sections hereinafter set forth affecting local conditions in the City of West Fargo, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Building Code; and the Board of City Commissioners of said City of West Fargo, by this section hereby approves and adopts such rules and regulations, as so modified, for use and application in the City of West Fargo, North Dakota, as well as for any area within the extraterritorial zoning jurisdiction of the City. Provided, that any amendments of the 2015 edition of the International Building Code may be adopted by the City by resolution.

Source: Ord. 1006, Sec. 1 (2014); Ord. 1081, Sec. 1 (2017)

5-0102. Modification of International Building Code. The International Building Code as adopted in Section 5-0101 is hereby changed and amended as follows:

5-0102. Modification of International Building Code. The International Building Code as adopted in Section 5-0101 is hereby changed and amended as follows:

SECTION 101.1 is hereby amended to read as follows:

[A] 101.1 Title. These regulations shall be known as the *Building Code* of ~~(NAME OF JURISDICTION)~~ the City of West Fargo hereinafter referred to as "this code."

SECTION 101.4.3 is hereby amended to read as follows:

[A] 101.4.3 Plumbing. The provisions of the ~~International Plumbing Code~~ North Dakota State Plumbing Code shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. The provisions of the ~~International Private Sewage Disposal Code~~ North Dakota State Plumbing Code shall apply to private sewage disposal systems.

SECTION 101.4.7 is hereby amended to read as follows:

[A] 101.4.7 Existing buildings. The provisions of the *International Existing Building Code* shall apply to matters governing the repair, alteration, change of occupancy, addition to and relocation of existing buildings.

Exception: Existing buildings may use Chapter 34 of the IBC 2012 as an alternative to using the IEBC 2015.

SECTION 101.4.8 is hereby added to read as follows:

Section 101.4.8. Where this code refers to flood requirements, the local jurisdiction flood plain management ordinance shall apply.

SECTION 104.2.1 is hereby deleted in its entirety.

SECTION 104.8 is hereby amended to read as follows:

[A] 104.8 Liability. The *building official*, member of the board of appeals or employee charged with the enforcement of this code. While acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be ~~civilly or criminally~~ rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act or omission performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be afforded all the protection provided by the city's insurance pool and immunities and defenses provided by other applicable

state and federal laws and shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The *building official* or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

SECTION 104.8.1 is hereby deleted in its entirety.

SECTION 104.10.1 is hereby deleted in its entirety.

SECTION 105.2 is hereby amended to read as follows:

105.2 Work exempt from permit. Exemptions . . .

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar used, provided the floor area is not greater than 120 square feet (11 m²).
2. Fences not over ~~7~~ 8.5 feet (~~2134~~ 2591 mm) high.
3. Oil derricks. . . .

~~6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route. . . .~~

~~11. Swings and other playground equipment accessory to detached one- and two-family dwellings.~~

~~12. Window awnings in Group R-3 and U occupancies supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.~~

13. Non-fixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

14. Reroofing.

SECTION 107.2.5.1 is hereby deleted in its entirety.

SECTION 107.3.1 is hereby amended to read as follows:

[A] 107.3.1. Approval of construction documents. When the *building official* issues a *permit*, the *construction documents* shall be *approved*, in writing or by stamp, as "Reviewed for Code Compliance." One set of *construction documents* so reviewed shall be retained by the *building official*. ~~The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or a duly authorized representative.~~

SECTION 109.2 is hereby amended to read as follows:

[A] 109.2 Schedule of permit fees. On buildings, structures, electrical, gas, mechanical, and plumbing systems or *alterations* requiring a *permit*, a fee for each *permit and plan* review shall be paid as required, in accordance with the schedule as established by the ~~applicable governing authority~~ Board of City Commissioners. The plan review fees specified in this subsection are separate from, and in addition to, permit fees. When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in Section 106.3.4.2, an additional plan review fee shall be charged in an amount not to exceed 50% of the building permit fee established in Section 108.2.

SECTION 110.3.3 is hereby deleted in its entirety and subsequent sections renumbered accordingly.

SECTION 110.3.10.1 is hereby deleted in its entirety.

SECTION 113 is hereby deleted in its entirety.

SECTION 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in ~~the International Energy Conservation Code, International Fuel Gas Code, International Fire Code, International Mechanical Code or International Plumbing Code~~ other referenced codes as adopted by the jurisdiction, such terms shall have the meanings ascribed to them as in those coded.

SECTION 305.2 is hereby amended to read as follows:

305.2. Group E, day care facilities. This group includes buildings and structures or portions thereof occupied by more than ~~five~~ twelve children older than 21/2 years of

age who receive educational, supervision or *personal care services* for fewer than 24 hours per day.

SECTION 305.2.2 is hereby amended to read as follows:

305.2.2 ~~Five Twelve~~ or fewer children. A facility having ~~five twelve~~ or fewer children receiving such day care shall be classified as part of the primary occupancy.

SECTION 305.2.3 is hereby amended to read as follows:

305.2.3 ~~Five Twelve~~ or fewer children in a dwelling unit. A facility such as the above within a *dwelling unit* and having ~~five twelve~~ or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the *International Residential Code*.

SECTION 308.6 is hereby amended to read as follows:

308.6 Institutional Group I-4, day care facilities. Institutional Group I-4 occupancy shall include buildings and structures occupied by more than ~~five twelve~~ persons of any age who receive *custodial care* for fewer than 24 hours per day by persons other than parents or guardians, relatives by blood, marriage or adoption, and in a place other than the home of the person cared for. This group shall include, but not be limited to, the following:

Adult day care
Child day care

SECTION 308.6.1 is hereby amended to read as follows:

308.6.1 Classification as Group E. A child day care facility that provides care for more than ~~five twelve~~ but no more than 100 children 21/2 years or less of age, where the rooms in which the children are cared for are located on a *level of exit discharge* serving such rooms and each of these child care rooms has an *exit door* directly to the exterior, shall be classified as Group E.

SECTION 308.6.3 is hereby amended to read as follows:

308.6.3 ~~Five Twelve~~ or fewer persons receiving care. A facility having ~~five twelve~~ or fewer persons receiving *custodial care* shall be classified as part of the primary occupancy.

SECTION 308.6.4 is hereby amended to read as follows:

308.6.4 ~~Five Twelve~~ or fewer persons receiving care in a dwelling unit. A facility such as the above within a

dwelling unit and having ~~five~~ twelve or fewer persons receiving *custodial care* shall be classified as a Group R-3 occupancy or shall comply with the *International Residential Code*.

SECTION 406.3.4.1 is hereby amended to read as follows:

406.3.4.1 Dwelling unit separation. The private garage shall be separated from the *dwelling unit* and its *attic* area by means of gypsum board, not less than 1/2 inch (12.7 mm) in thickness, applied to the garage side. Garages beneath habitable rooms shall be separated from all habitable rooms above by not less than a 5/8-inch (15.9 mm) Type X gypsum board or equivalent and 1/2-inch (12.7 mm) gypsum board applied to structures supporting the separation from habitable rooms above the garage. Door openings between a private garage and the *dwelling unit* shall be equipped with either solid wood doors or solid or honeycomb core steel doors not less than 1 3/8 inches (34.9 mm) in thickness, or doors in compliance with Section 716.5.3 with a fire protection rating of not less than 20 minutes. ~~Doors shall be self-closing and self-latching.~~

SECTION 706.6 is hereby amended to read as follows:

706.6 Vertical continuity. *Fire walls* shall extend from the foundation to a termination point not less than 30 inches (762 mm) above both adjacent roofs.

Exceptions:

1. Stepped buildings in accordance with Section 706.6.1.
2. Two-hour . . .

6. Buildings with sloped roofs in accordance with Section 706.6.2.

7. Fire walls installed within detached structures of Group U or Group S-2 occupancies may terminate at the underside of the roof sheathing provided such walls are not required to be fire-resistive construction due to proximity to property lines.

SECTION 801.5 is hereby deleted in its entirety:

SECTION 903.3.1.1 is hereby amended to read as follows:

[F] 903.3.1.1 NFPA 13 sprinkler systems. Where the provisions of this code require that a building or portion thereof be equipped throughout with an *automatic sprinkler system* in accordance with this section,

sprinklers shall be installed throughout in accordance with NFPA 13 except as provided in Sections 903.3.1.1.1 and 903.3.1.1.2. Sprinkler heads in unoccupied mall tenant spaces may be installed at ceiling height if allowed by the code official. Permission will be granted on an individual basis. Combustible storage shall not be allowed in these unoccupied tenant spaces if sprinkler heads are installed at ceiling height. Signage shall be provided where required.

SECTION 905.1 is hereby amended to read as follows:

[F] Section 905.1. General. Standpipe systems shall be provided in new buildings and structures in accordance with Sections 905.2 through 905.10. In buildings used for high-piled combustible storage, fire protection shall be in accordance with the *International Fire Code*.

Exception: The installation of fire hose on standpipes may be omitted when approved by the fire code official. Approved standpipe hose valves and connection shall be provided where required.

SECTION 907.2.3 is hereby amended to read as follows:

[F] 907.2.3 Group E. A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When *automatic sprinkler systems* or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system. Where approved by the fire code official, a building's emergency communication system interfaced with the fire alarm system in accordance with NFPA 72 is acceptable.

SECTION 907.2.11.1 is hereby amended to read as follows:

[F] 907.2.11.1 Group R-1. Single- or multiple-station smoke alarms shall be installed in all of the following locations in Group R-1:

1. In sleeping areas.
2. In every room in the path of the means of egress from the sleeping area to the door leading from the *sleeping unit*.
3. In each *story* within the *sleeping unit*, including basements. For *sleeping units* with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full *story* below the upper level.

4. In dwelling units where the ceiling height of a room open to the hallway serving the sleeping rooms exceeds that of the hallway by 24 inches (610 mm) or more, smoke detectors shall be installed in the hallway and in the adjacent room.

SECTION 907.2.11.2 is hereby amended to read as follows:

[F] 907.2.11.2 Groups R-2, R-3, R-4 and I-1. Single or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and I-1 regardless of *occupant load* at all of the following locations.

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

2. In each room used for sleeping purposes.

3. In each *story* within a *dwelling unit*, including basements but not including crawl spaces and uninhabitable *attics*. In *dwelling*s or *dwelling units* with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full *story* below the upper level.

4. In dwelling units where the ceiling height of a room open to the hallway serving the sleeping rooms exceeds that of the hallway by 24 inches (610 mm) or more, smoke detectors shall be installed in the hallway and in the adjacent room.

SECTION 1011.1 is hereby amended to read as follows:

1011.1 General. *Stairways* serving occupied portions of a building shall comply with the requirements of Sections 1011.2 through 1011.13. *Alternating tread devices* shall comply with Section 1011.14. *Ships ladders* shall comply with Section 1011.15. *Ladders* shall comply with Section 1011.16.

Exceptions:

1. Within rooms or spaces used for assembly purposes, stepped aisles shall comply with Section 1029.

2. Stairways used only to attend equipment or private stairways serving an occupant load of 10 or fewer persons and which are not accessible to the public.

SECTION 1011.2 is hereby amended to read as follows:

1011.2 Width and capacity. The required capacity of *stairways* shall be determined as specified in Section 1005.1, but the minimum width shall be not less than 44 inches (1118 mm). See Section 1009.3 for *accessible means of egress stairways*.

Exceptions:

1. *Stairways* serving an *occupant load* of less than 50 shall have a width of not less than 36 inches (914 mm).
2. *Spiral stairways* as provided for in Section 1011.10.
3. Where an incline platform lift or stairway chairlift is installed on *stairways* serving occupancies in Group R-3, or within *dwelling units* in occupancies in Group R-2, a clear passage width not less than 20 inches (508 mm) shall be provided. Where the seat and platform can be folded when not in use, the distance shall be measured from the folded position.
4. Stairways used only to attend equipment or private stairways serving an occupant load of 10 or fewer persons and which are not accessible to the public.

SECTION 1011.5.2 is hereby amended to read as follows:

1011.5.2 Riser height and tread depth. *Stair riser ...*

... treads at the intersections with the walk line and a minimum tread depth of 10 inches (254 mm) within the clear width of the *stair*.

Exceptions:

1. *Spiral stairways ...*
5. In Group I-3 facilities, *stairways* providing access to guard towers, observation stations and control rooms, not more than 250 square feet (23 m₂) in area, shall be permitted to have a maximum riser height of 8 inches (203 mm) and a minimum tread depth of 9 inches (229 mm).
6. Stairways used only to attend equipment or private stairways serving an occupant load of 10 or fewer persons and which are not accessible to the public are permitted to have a maximum 8 inch riser height and minimum 9 inch tread depth.

SECTION 1011.11 is hereby amended to read as follows:

1011.11 Handrails. *Stairways* shall have *handrails* on each side and shall comply with Section 1014. Where glass is

used to provide the *handrail*, the *handrail* shall comply with Section 2407.

Exceptions:

1. *Stairways* within ...

4. Changes in room elevations of three or fewer risers within dwelling units and sleeping units in Group R-2 and R-3 do not require *handrails*.

5. Stairways used only to attend equipment or private stairways serving an occupant load of 10 or fewer persons and which are not accessible to the public.

6. Vehicle service pit stairways are exempt from the rules for stairway railings and guards if they would prevent a vehicle from moving into a position over the pit.

SECTION 1015.2 is hereby amended to read as follows:

1015.2 Where required. *Guards* shall be located along open-sided walking surfaces, including *mezzanines*, *equipment platforms*, *aisles*, *stairs*, *ramps* and *landings* that are located more than 30 inches (762 mm) ~~measured vertically to the floor or grade below at any point within 36 inches (914 mm) horizontally to the edge of the open side~~ above the floor or grade below or if within 36 inches (914 mm) horizontally to the edge of the open side the vertical measurement to the floor or grade below is greater than 48 inches. *Guards* shall be adequate in strength and attachment in accordance with Section 1607.8.

SECTION 1104.4 is hereby amended to read as follows:

1104.4 Multilevel buildings and facilities. At least one *accessible route* shall connect each *accessible story* and *mezzanine* in multilevel buildings and *facilities*.

Exceptions:

1. An *accessible route* is not required to *stories*, *basements* and *mezzanines* that have an ~~aggregate~~ area of not more than 3,000 square feet (278.7 m₂) and are located above ~~and~~ or below *accessible levels* and are below the third story. This exception shall not apply to:

1.1. Multiple tenant facilities of Group M occupancies...

SECTION 1203.1 is hereby amended to read as follows:

1203.1 General. Buildings shall be provided with natural ventilation in accordance with Section 1203.4, or mechanical ventilation in accordance with the *International Mechanical Code*.

~~Where the air infiltration rate in a dwelling unit is less than 5 air changes per hour when tested with a blower door at a pressure 0.2 inch w.c. (50 Pa) in accordance with Section R402.4.1.2 of the *International Energy Conservation Code Residential Provisions*, the dwelling unit shall be ventilated by mechanical means in accordance with Section 403 of the *International Mechanical Code*. Ambulatory care facilities and Group I-2 occupancies shall be ventilated by mechanical means in accordance with Section 407 of the *International Mechanical Code*.~~

SECTION 1207 is hereby deleted in its entirety.

SECTION 1403.6 is hereby deleted in its entirety.

SECTION 1403.7 is hereby deleted in its entirety.

SECTION 1507.2.6 is hereby amended to read as follows:

1507.2.6 Fasteners. Fasteners for asphalt shingles shall be galvanized, stainless steel, aluminum, or copper roofing nails, minimum 12 gage [0.105 inch (2.67 mm)] shank with a minimum 3/8-inch-diameter (9.5 mm) head, of a length to penetrate through the roofing materials and a minimum of 3/4 inch (19.1 mm) into the roof sheathing or other fasteners as approved by the building official and shingle manufacturer. Where the roof sheathing is less than 3/4 inch (19.1 mm) thick, the nails shall penetrate through the sheathing. Fasteners shall comply with ASTM F1667.

SECTION 1511 is hereby deleted and relocated as Appendix N.

SECTION 1601.1 is hereby amended to read as follows:

1601.1 Scope. The provisions of this chapter shall govern the structural design of buildings, structures and portions thereof regulated by this code.

It shall not be the responsibility of the building official to determine engineering requirements of this code. Exclusive of the conventional light-framing wood construction provisions referenced in Section 2308, the method to resist loads as referenced in this chapter is the responsibility of a structural engineer or other qualified design professional.

SECTION 1603.1 is hereby amended to read as follows:

1603.1 General. *Construction documents* shall show the size, section and relative locations of structural members with floor levels, column centers and offsets dimensioned. The design loads and other information pertinent to the structural design required by Sections 1603.1.1 through 1603.1.8 shall be indicated on the *construction documents*.

Exception: *Construction documents* for buildings constructed in accordance with the *conventional light-frame construction* provisions of Section 2308 shall indicate the following structural design information:

1. Floor and roof live loads.
2. Ground snow load, *Pg.* ...

- ~~5. Flood design data, if located in flood hazard areas established in Section 1612.3.~~
6. Design load-bearing values of soils.

SECTION 1603.1.7 is hereby deleted in its entirety.

SECTION 1610.1 exception is hereby amended to read as follows:

1610.1 General. Foundation walls and retaining walls .
. .

Exception: Foundation walls extending not more than ~~8~~ 9 feet (2438 mm) below grade and laterally supported at the top by flexible diaphragms shall be permitted to be designed for active pressure.

SECTION 1612 is hereby deleted in its entirety.

SECTION 1804.4 is hereby amended to read as follows:

1804.4 Site grading. ~~The ground immediately adjacent to the foundation shall be sloped away from the building at a slope of not less than one unit vertical in 20 units horizontal (5 percent slope) for a minimum distance of 10 feet (3048 mm) measured perpendicular to the face of the wall. If physical obstructions or lot lines prohibit 10 feet (3048 mm) of horizontal distance, a 5-percent slope shall be provided to an approved alternative method of diverting water away from the foundation. Swales used for this purpose shall be sloped a minimum of 2 percent where located within 10 feet (3048 mm) of the building foundation. Impervious surfaces within 10 feet (3048 mm) of the building foundation shall be sloped a minimum of 2 percent away from the building. Surface drainage shall be diverted to a storm sewer conveyance or other approved~~

point of collection. Lots shall be graded to drain surface water away from foundation walls.

~~**Exception:** Where climatic or soil conditions warrant, the slope of the ground away from the building foundation shall be permitted to be reduced to not less than one unit vertical in 48 units horizontal (2-percent slope).~~

The procedure used to establish the final ground level adjacent to the foundation shall account for additional settlement of the backfill.

SECTION 1804.5 is hereby deleted in its entirety.

SECTION 1805.1.2.1 is hereby deleted in its entirety.

SECTION 1809.5 is hereby amended to read as follows:

1809.5. Frost protection. Except where otherwise protected from frost, foundations and other permanent supports of buildings and structures shall be protected from frost by one or more of the following methods:

1. Extending below the frost line of the locality.
2. Constructing in accordance with ASCE 32.
3. Erecting on solid rock.

Exception: Free-standing buildings meeting all of the following conditions shall not be required to be protected:

1. Assigned to *Risk Category I*.
2. Area of 600 square feet (56 m2) or less for light-frame construction or 400 square feet (37 m2) or less for other than light-frame construction.
3. Eave height of 10 feet (3048 mm) or less.
4. Free-standing buildings used as Group U occupancies for the storage of private or pleasure-type vehicles constructed in accordance with Sections 406.3.1

Shallow foundations shall not bear on frozen soil unless such frozen condition is of a permanent character.

SECTION 2901.1 is hereby amended to read as follows:

[P] 2901.1 Scope. The provisions of this chapter and the ~~*International Plumbing Code*~~ North Dakota State Plumbing Code shall govern the erection, installation, alteration, repairs, relocation, replacement, addition to, use or maintenance of plumbing equipment and systems. Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the ~~*International Plumbing*~~

~~Code North Dakota State Plumbing Code.~~ Private sewage disposal systems shall conform to the ~~International Private Sewage Disposal Code~~ North Dakota State Plumbing Code.

SECTION 3102.7 is hereby amended to read as follows:

3102.7. Engineering Design. The structure shall be designed and constructed to sustain dead loads, loads due to tension or inflation, live loads including wind, snow ~~or flood~~ and seismic loads and in accordance with Chapter 16.

SECTION 3109 is hereby deleted and relocated as Appendix O.

SECTION 3313 is hereby deleted in its entirety.

The following amendments are applicable to Chapter 34 of the 2012 International Building Code:

SECTION 3403.2 is hereby deleted in its entirety.

SECTION 3404.2 is hereby deleted in its entirety.

SECTION 3405.5 is hereby deleted in its entirety.

SECTION 3409.2 is hereby deleted in its entirety.

SECTION 3410.1 is hereby amended to read as follows:

3410.1 Conformance. Structures moved into ~~or within~~ the jurisdiction shall comply with the provisions of this code for new structures.

SECTION 3412.2 is hereby amended to read as follows:

3412.2 Applicability. Structures existing prior to 1952 ~~[DATE TO BE INSERTED BY THE JURISDICTION. NOTE: IT IS RECOMMENDED THAT THIS DATE COINCIDE WITH THE EFFECTIVE DATE OF BUILDING CODES WITHIN THE JURISDICTION]~~, in which there is work involving additions, alterations or changes of occupancy shall be made to comply with the requirements of this section or the provisions of Section 3403 through 3409. The provisions in Section 3412.2.1 through 3412.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Group A, B, E, F, M, R, S and U. These provisions shall not apply to buildings with occupancies in Group H or I.

SECTION 3412.2.4.1 is hereby deleted in its entirety.

Source: Ord. 1006, Sec. 2 (2014); Ord. 1081, Sec. 2 (2017)

5-0103. Penalty. Any person violating any provision of the International Building Code adopted by this title or any section of this title shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

5-0104. Appeals. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The West Fargo City Commission shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The West Fargo City Commission shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Commission may only reverse or modify a decision of the Code Official by a vote of at least three members of the Commission. If not all members of the Commission are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The commission shall have no authority to waive requirements of the Code.

CHAPTER 5-02

DANGEROUS BUILDINGS

SECTIONS:

- 5-0201. Definitions
- 5-0202. Standards for Repair, Vacation, or Demolition.
- 5-0203. Dangerous Buildings - Nuisances.
- 5-0204. Duties of Building Administrator.
- 5-0205. Duties of Board of City Commissioners.
- 5-0206. Owner Absent from the City.
- 5-0207. Appeal.
- 5-0208. Penalty.

5-0201. DEFINITIONS. All buildings or structures which have any or all of the following defects shall be deemed "dangerous buildings":

- (a) Those whose interior walls or other vertical structural members lean, list or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
- (b) Those which, exclusive of the foundation, show thirty-three percent or more of damage or deterioration of the supporting member or members, or fifty percent of damage or deterioration of the nonsupporting enclosing or outside walls or covering.
- (c) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.
- (d) Those which have been damaged by fire, wind, or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the city.
- (e) Those which have become, or are, so dilapidated, decayed, unsafe or unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause or aggravate sickness or disease, so as to work injury to the health, morals, safety, or general welfare of those living therein.

- (f) Those having light, air, and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live or may live therein.
- (g) Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes, or other means of communication.
- (h) Those which have parts thereof which are so attached that they may fall and injure members of the public or property.
- (i) Those which because of their condition are unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of this city.
- (j) Those buildings existing in violation of any provision of the Building Code, zoning ordinances, any provision of the Fire Prevention Code or other ordinances of this city.

5-0202. STANDARDS FOR REPAIR, VACATION, OR DEMOLITION. The following standards shall be followed in substance by the Board of City Commissioners in ordering repair, vacation, or demolition:

- (a) If the "dangerous building" can reasonably be repaired so that it will no longer exist in violation of the terms of this chapter, it shall be ordered repaired.
- (b) If the "dangerous building" is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants it shall be ordered to be vacated.
- (c) In any case where a "dangerous building" is fifty percent damaged, decayed, or deteriorated from its original value or structure, it shall be demolished, and in all cases where a building cannot be repaired so that it will no longer be in violation of the terms of this chapter, it shall be demolished. In all cases where a "dangerous building" is a fire hazard existing or erected in violation of the terms of this chapter or any ordinance of this city or statute of the state of North Dakota, it shall be demolished.

5-0203. DANGEROUS BUILDINGS - NUISANCES. All "dangerous buildings" within the terms of Section 5-0201 are hereby declared to be public nuisances and shall be repaired, vacated, or demolished as hereinbefore and hereinafter provided.

5-0204. DUTIES OF BUILDING ADMINISTRATOR. The building administrator shall:

- (a) Inspect any building, wall, or structure about which complaints are filed by any person to the effect that a building, wall, or structure is or may be existing in violation of this chapter.
- (b) Inspect any building, wall, or structure reported (as hereinafter provided for) by the fire or police departments of this city as probably existing in violation of the terms of this chapter.
- (c) Notify in writing the owner, occupant, lessee, mortgagee, and all other persons having an interest in said building, as shown by the records in the office of the register of deeds of the county of Cass, of any building found by the building administrator to be a "dangerous building" within the standards set forth in Section 5-0201 of this chapter, that: (1) the owner must vacate, or repair, or demolish said building in accordance with the terms of the notice and this chapter; (2) the owner or occupant must vacate said building or may have it repaired in accordance with the notice and remain in possession. Provided, that any person notified under this subsection to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding thirty days, as may be necessary to do, or have done, the work or act required by the notice provided for herein.
- (d) Set forth in the notice provided for in subsection (c) hereof a description of the building, or structure deemed unsafe, a statement of the particulars which make the building or structure a "dangerous building," and an order requiring the same to be put in such condition as to comply with the terms of this ordinance within such length of time, not exceeding thirty days, as is reasonable.
- (e) Report to the Board of City Commissioners any noncompliance with the "notice" provided for in subsections (c) and (d) hereof.
- (f) Appear at all hearings conducted by the Board of City Commissioners and testify as to the condition of "dangerous buildings."
- (g) Place a notice on all "dangerous buildings" reading as follows: "This building has been found to be a 'dangerous building' by the building administrator. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee, or mortgagee of this building and all other persons having an interest in said building as shown by the records of the register of

deeds of the county of Cass. It is unlawful to remove this notice until such notice is complied with."

5-0205. DUTIES OF BOARD OF CITY COMMISSIONERS. The Board of City Commissioners shall:

- (a) Upon receipt of a report of the building administrator as provided for in Section 5-0204, subsection (e), give written notice to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the register of deeds of the county of Cass to appear before it on the date specified in the notice to show cause why the building or structure reported to be a "dangerous building" should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the building administrator's notice provided for herein in Section 5-0204, subsection (d).
- (b) Hold a hearing and hear such testimony as the building inspector or the owner, occupant, mortgagee, lessee or any other person having an interest in said building as shown by the records of the register of deeds of the county of Cass shall offer relative to the "dangerous building".
- (c) Make written findings of fact from the testimony offered pursuant to subsection (b) as to whether or not the building in question is a "dangerous building" within the terms of Section 5-0201.
- (d) Issue an order based upon findings of fact made pursuant to subsection (c) hereof commanding the owner, occupant, mortgagee, lessee, and all other persons having an interest in said building as shown by the records of the register of deeds of the county of Cass to repair, vacate, or demolish any building found to be a "dangerous building" within the terms of this chapter and provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing said "dangerous building".
- (e) If the owner, occupant, mortgagee, or lessee fails to comply with the order provided for in subsection (d) hereof, within thirty days, the Board of City Commissioners shall cause such building or structure to be repaired, vacated, or demolished as the facts may warrant, under the standards, hereinbefore provided for in Section 5-0202 of this chapter. The cost to the City of West Fargo of demolishing, repairing or removing any building or structure under this chapter shall be determined by the Board of City Commissioners after written notice to the property owner of a hearing thereon; and shall then be certified to the County

Auditor as a special assessment levied upon the described property and to be spread upon the taxes against said property.

- (f) Report to the city attorney the names of all persons not complying with the order provided for in subsection (d) of this section.

5-0206. OWNER ABSENT FROM THE CITY. All notices or orders provided for herein shall be sent by registered mail to such owner, occupant, lessee or mortgagee, and all other persons having an interest in said building, to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the "dangerous building" to which it relates. Such mailing and posting shall be deemed adequate service.

5-0207. APPEAL. The owner and the occupant shall have thirty (30) days from the date of the order provided for in Section 5-0205 hereof in which to appeal to the Courts from the action of the Board of City Commissioners. The Board of City Commissioners shall not demolish, repair, or remove the building or structure or cause the same to be done during the period of time herein provided for appeal.

5-0208. PENALTY. Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

CHAPTER 5-03

MOVING BUILDINGS

Source: Ord. 841, Sec. 1 (2009)

SECTIONS:

- 5-0301. Permit Required.
- 5-0302. Permit Application.
- 5-0303. Information Contained for Permit Application.
- 5-0304. Building Permit Required.
- 5-0305. House-Mover's License - Requirements.
- 5-0306. Removal of Overhead Wires and Cables - Notice.
- 5-0307. Removal of Attached Wires, Cables and Pipes.
- 5-0308. Permit Required to Move Buildings That Will Injure Trees - Tree Trimming Cost Paid by Mover.
- 5-0309. Moving Buildings Across Railway Tracks.
- 5-0310. Building in Street - Warning Light Required.
- 5-0311. Equipment in Street - Lights Required.
- 5-0312. Hours of Moving Operations - Buildings Not to Stand on Streets Without Written Permission.
- 5-0313. Movers Restricted to Approved Routes.
- 5-0314. Penalty for Violating Article.
- 5-0315. Cost of Rebuilding, Remodeling, or Moving May Be Assessed as Taxes.

5-0301. PERMIT REQUIRED. No person shall move, remove, raise or support free of its foundation, any building or structure within the limits of the City of West Fargo, or cause or hire said work to be done, or assist in said work, unless a permit for said work has been obtained from the City of West Fargo in accordance with the provisions of this chapter. A permit issued by the City of West Fargo shall only be valid for those locations in which the City exercises administrative control.

5-0302. PERMIT APPLICATION. No permit to move, remove, raise or support free of its foundation, any building or structure within the limits of the City of West Fargo shall be issued until written application for permit has been filed with the City Engineer on forms provided by the City of West Fargo, and the application for permit has been approved by the City Administrator. Prior to final approval of an application for permit, the City Administrator shall forward the application to a committee of City Staff for review. The committee shall provide to the City Administrator recommendations to approve, disapprove and set special conditions relating to the issuance of the permit. The City Administrator in granting a moving permit may condition the permit upon the applicant meeting certain conditions such as having a licensed mover move the building, time limits in which the building must be moved, routes that must be followed, posting a bond, and any other similar conditions as deemed advisable by the City Administrator.

Any person denied a moving permit or contesting any conditions placed on the permit, may appeal to the City Commission, who shall review the permit and its conditions at its next regularly scheduled meeting. Applications must be presented to the City Auditor's office at least 10 business days prior to a scheduled move date. The fee will be determined by the committee and be due upon issuance of the permit.

Source: Ord. 876, Sec. 1 (2011)

5-0303. INFORMATION CONTAINED FOR PERMIT APPLICATION. Written application for permit to move, remove, raise or support free of its foundation any building or structure within the limits of the City of West Fargo shall contain the following information concerning the building or structure to be moved, removed, raised or supported:

1. Date of application.
2. Name and address of applicant for permit.
3. Name and address of owner of building.
4. Name and address of person, firm or corporation the applicant for permit will employ to do the moving.
5. Size of building or structure.
6. Age and general description of building or structure.
7. Location of building or structure at time of making application.
8. Proposed new location for building or structure.
9. Route or road along which it is proposed to move the building or structure from present location to proposed new location.
10. Condition of building or structure at time application is made for permit.
11. How long the moving of building or structure is expected to take and when moving is expected to be completed if permit is granted.

Source: Ord. 876, Sec. 2 (2011)

5-0304. BUILDING PERMIT REQUIRED. No moving permit shall be granted for any structure over 120 square feet being moved to a location within the jurisdictional limits of the City of West Fargo unless and until the applicant also receives a building permit from the Building Administrator.

Source: Ord. 876, Sec. 3 (2011)

5-0305. HOUSE-MOVER'S LICENSE - REQUIREMENTS. The City Administrator may require as a condition to the approval of application for permit and issuance of permit under this chapter that the moving be done only by one holding a license for the moving of buildings and structures within the City of West Fargo. No such license shall be granted until the person applying therefor shall have paid to the City Administrator a license fee and shall have given a surety bond payable to the City, in amounts set by

resolution of the City Commission, on a form satisfactory to the City Administrator, and conditioned, among other things, that said party will pay any and all damages which may be caused to any property, either public or private, within the City, whether said damages or injury be inflicted by said party, his employees, agents or workmen; and conditioned also that said party will save and indemnify and keep harmless the said City against all liabilities, judgments, costs and expenses which may in any way accrue against the City in consequence of the granting of such license, and will in all things strictly comply with the provisions of this chapter and with the conditions of any and all permits which may be issued hereunder to said house-mover or one employing him. The City Administrator may also require proof of liability insurance and worker's compensation insurance prior to issuing the license.

Upon the execution of such bond, and its acceptance by the City Administrator, the "house-mover's" license for the moving of buildings and structures within the City of West Fargo shall be issued. All such licenses shall expire one (1) year from date of issue.

5-0306. REMOVAL OF OVERHEAD WIRES AND CABLES - NOTICE.

1. In every case in which a permit shall be issued as herein provided for the removal of any house or structure, when such removal requires the displacement of any overhead electrical or other wire or cable, it shall be the duty of the person, association or corporation owning, operating or controlling such wire or cable to remove or displace the same as far as may be necessary to permit the removal of such house, building or structure.
2. The person to whom a removal permit shall have been issued shall notify the person, association or corporation owning, operating or controlling such wire or cable, to remove or displace the same to facilitate the removal of said house, building or structure and shall exhibit to said person, association or corporation the properly issued permit authorizing the removal of said house, building or structure, and it shall thereupon be the duty of said person, association or corporation, within a reasonable time, not exceeding twenty-four (24) hours thereafter to remove or displace such wires or cables sufficiently to allow the passage of said house, building or structure.

5-0307. REMOVAL OF ATTACHED WIRES, CABLES AND PIPES. The person to whom a removal permit has been issued shall, before raising, moving or removing any building or structure to which electric wires are attached, notify the persons, associations or corporations owning or controlling such electric wiring, cables or piping of the proposed moving of said building or structure. The person, association or corporation so notified shall within a reasonable time, not exceeding twenty-four (24) hours, thereafter,

disconnect and make safe all such electric wiring, cables or piping.

5-0308. PERMIT REQUIRED TO MOVE BUILDINGS THAT WILL INJURE TREES - TREE-TRIMMING COST PAID BY MOVER. No person, firm, or corporation, whether licensed or otherwise, shall move any building or structure along any street, alley or other public way in such a manner as to interfere with or injure any tree, shrub, or other vegetable growth receiving a house moving permit. The application shall specify the building or structure to be moved and the proposed route. All necessary tree-trimming or shrub-trimming costs shall be paid by applicant.

Source: Ord. 876, Sec. 4 (2011)

5-0309. MOVING BUILDINGS ACROSS RAILWAY TRACKS. No house, building, or structure shall be moved across any railway track except at such time as permitted by the person, associations, or corporation owning or controlling such tracks.

5-0310. BUILDING IN STREET - WARNING LIGHT REQUIRED. When any building or structure is being moved across or through any street or alley, a warning light must be in operation at each corner of such building or structure, from sunset to sunrise.

5-0311. EQUIPMENT IN STREET - LIGHTS REQUIRED. All ropes, blocks, winches, windlasses, or other equipment used in the moving of said building or structure must, when obstructing the free use of a street or alley, be protected by suitable warning lights from sunset to sunrise.

5-0312. HOURS OF MOVING OPERATIONS - BUILDINGS NOT TO STAND ON STREETS WITHOUT WRITTEN PERMISSION. Moving operations upon a street or alley shall be carried on continuously for at least eight hours daily, except Sunday, and in such manner as to cause the least inconvenience to the public use of such street or alley. No building shall be left, or be permitted to stand, on any street, alley, or public place in the City without written permission from the Office of Public Works and the Police Department.

Source: Ord. 876, Sec. 5 (2011)

5-0313. MOVERS RESTRICTED TO APPROVED ROUTES. The movement of any building or structure along a public right-of-way shall be restricted to the route approved by the Director of Public Works. The person, firm, company or corporation directing such movement shall provide pilot and follow vehicles, spotters, warning devices, flags and signs to adequately warn the public of the danger and control the movement of traffic along the approved route.

5-0314. PENALTY FOR VIOLATING ARTICLE. Every person, firm, company, or corporation who shall violate any of the terms and provisions of this article shall, upon conviction thereof, be punished by a fine not to exceed \$1,000, or by imprisonment not to

exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.

5-0315. COST OF REBUILDING, REMODELING, OR MOVING MAY BE ASSESSED AS TAXES. In the event that any person, firm, company, or corporation shall violate any provision of this article and after conviction thereof shall refuse to correct the violation within 15 days after written notice from the building inspector so to do, then and in that event the City may proceed, under the direction of the Director of Public Works, to correct any such violation, including the rebuilding, remodeling, or moving of any house or structure so as to comply with this article; the cost and expenses of such work, as certified by the Director of Public Works to the City Administrator, shall be recoverable in an action against the owner or owners of the real property upon which the structure or house is located, or any person, firm, company or corporation found guilty of a violation of this article, or it shall be certified by the City Administrator as a special tax assessment against the lot or parcel of land upon which said structure or house is located. In August of each year the Board of City Commissioners shall review all such assessments and hear all complaints against the same and approve the same as finally adjusted and such special assessment shall then be certified to the County Auditor to be placed upon the tax roll for that year and be collected as other City taxes.

CHAPTER 5-04

FLOOD DAMAGE PREVENTION

SECTIONS:

- 5-0401. Statutory Authorization.
 - 5-0402. Findings of Fact.
 - 5-0403. Statement of Purpose.
 - 5-0404. Methods of Reducing Flood Losses.
 - 5-0405. Adoption of Flood Proofing Code.
 - 5-0406. Definitions.
 - 5-0407. Land to Which This Ordinance Applies.
 - 5-0408. Basis for Establishing the Areas of Special Flood Hazard.
 - 5-0409. Compliance.
 - 5-0410. Abrogation and Greater Restrictions.
 - 5-0411. Interpretation.
 - 5-0412. Warning and Disclaimer of Liability.
 - 5-0413. Establishment of Development Permit.
 - 5-0414. Designation of the Building Administrator.
 - 5-0415. Duties and Responsibilities of the Building Administrator.
 - 5-0416. Variance Procedure.
 - 5-0417. Provisions for Flood Hazard Reduction -- General Standards.
 - 5-0418. Provisions for Flood Hazard Reduction -- Specific Standards.
 - 5-0419. Floodways.
 - 5-0420. Validity.
 - 5-0421. Penalty.
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5-0401. STATUTORY AUTHORIZATION. The Legislature of the State of North Dakota has in Chapter 40-47 of the North Dakota Century Code delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Board of City Commissioners of the City of West Fargo, North Dakota does ordain as follows:

SOURCE: Ord. 778, Sec. 1 (2006)

5-0402. FINDINGS OF FACT.

1. The flood hazard areas of West Fargo are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

2. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

5-0403. STATEMENT OF PURPOSE. It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. To protect human life and health;
2. To minimize expenditure of public money for costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
7. To insure that potential buyers are notified that property is in an area of special flood hazard; and
8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

5-0404. METHODS OF REDUCING FLOOD LOSSES. In order to accomplish its purposes, this ordinance includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Controlling filling, grading, dredging, and other development which may increase flood damage;

4. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters; and
5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

5-0405. ADOPTION OF FLOOD PROOFING CODE. There is hereby adopted by the Board of City Commissioners of the City of West Fargo for the purpose of providing minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within the "Floodway and the Special Flood Hazard Area" and certain equipment specifically regulated herein, including permits and penalties, that certain code known as the Flood Proofing Code prepared by Moore Engineering, Inc., of West Fargo, North Dakota, on December 10, 1974, and revised in 1978, of which not less than three (3) copies have been and now are filed in the office of the City Auditor of the City of West Fargo, and the same are hereby adopted and incorporated as fully as if set out at length herein, and from the date on which this title shall take effect, the provisions thereof shall be controlling in the construction of all buildings and structures therein contained within the jurisdiction of the City of West Fargo.

5-0406. DEFINITIONS. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

1. "Appeal" means a request for a review of the Building Administrator's interpretation of any provisions of this ordinance or a request for a variance.
2. "Area of special flood hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.
3. "Base flood" or "100-year flood" means the flood having a one percent chance of being equaled or exceeded in any given year.
4. "Base Flood Elevation" (BFE) means the height of the base flood or 100-year flood usually in feet above mean sea level.
5. "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.
6. "Best Available Data" (BAD) means water elevation information from any source used to estimate or determine a base flood elevation (i.e. high water mark).

7. "Conveyance or hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.
8. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.
9. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland waters and/or
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
10. "Flood Insurance Rate Map" (FIRM) means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
11. "Flood Insurance Study" means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.
12. "Floodproofing" (Dry) means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight two feet above the base flood elevation with walls that are substantially impermeable to the passage of water.
13. "Floodproofing" means any combination of structural and non-structural additions, changes or adjustments to properties and structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures and contents of buildings.
14. "Floodproofing Code" means the Flood Proofing Code of the City of West Fargo, North Dakota, hereinbefore referred to and adopted in Section 5-0405.
15. "Floodway" or "regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
16. "Lowest floor" means lowest floor of a structure including the basement.
17. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent

chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle," but does include "mobile home."

18. "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
19. "New construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.
20. "Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
21. "Recreational vehicle" means a vehicle which is:
 - a. built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection;
 - c. designed to be self-propelled or permanently towable by a light duty truck;
 - d. designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational camping, travel, or seasonal use; including, but not limited to:
 - e. travel trailers, trailers on wheels, park-model trailers, and other similar vehicles.
22. "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

23. "Structure" means a walled and roofed building or manufactured home that is principally above ground.
24. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
25. "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
- a. Before the improvement or repair is started, or
 - b. If the structure has been damaged and is being restored before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- a. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
 - b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
26. "Variance" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

SOURCE: Ord. 778, Sec. 2 (2006).

5-0407. LANDS TO WHICH THIS ORDINANCE APPLIES. This ordinance shall apply to all areas of special flood hazards within the jurisdiction of West Fargo.

5-0408. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD. The areas of special flood hazard identified by the Federal Emergency Management Agency in scientific and engineering report entitled "The Flood Insurance Study, Cass County, North Dakota" dated January 16, 2015, and any subsequent amendments to that map,

with an accompanying "Flood Insurance Rate Map" is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at the City Hall in West Fargo.

SOURCE: Ord. 479, Sec. 1 (1995); Ord. 1017, Sec. 1 (2014)

5-0409. COMPLIANCE. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations.

5-0410. ABROGATION AND GREATER RESTRICTIONS. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deeded restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

5-0411. INTERPRETATION. In the interpretation and application of this ordinance, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

5-0412. WARNING AND DISCLAIMER OF LIABILITY. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of West Fargo, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made thereunder.

5-0413. ESTABLISHMENT OF DEVELOPMENT PERMIT. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 5-0408. Application for a development permit shall be made on forms furnished by the City Commission of West Fargo and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimension, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. All elevation readings must be certified by a registered professional surveyor, engineer or architect, and compliance with flood proofing regulations, must be certified to by a registered professional engineer or architect. Specifically, the following information is required:

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures.
2. Elevation in relation to mean sea level to which any structure has been floodproofed.
3. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 5-0418.B.
4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
5. Description of structures (temporary or permanent), in compliance with the "Flood Proofing Code of the City of West Fargo" which is made a part of the ordinance by reference.
6. A statement as to whether or not, if the permit application is for a new structure or the substantial improvement of an existing structure, such structure contains a basement.
7. If the application for a permit relates to a manufactured home park or a manufactured home subdivision, a copy of the excavation plan indicating alternative vehicular access and escape routes for said manufactured home park or manufactured home subdivision, shall be attached to said application as well as a statement by the applicant that such plan has been filed with the Disaster Emergency Services Office of Cass County, North Dakota.

SOURCE: Ord. 778, Sec. 3 (2006).

5-0414. DESIGNATION OF THE BUILDING ADMINISTRATOR. The Building Administrator is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

5-0415. DUTIES AND RESPONSIBILITIES OF THE BUILDING ADMINISTRATOR. Duties of the Building Administrator shall include, but not be limited to:

A. Permit Review

1. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
2. Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 5-0419(1) are met.

B. Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 5-0408, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the Building Administrator shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer Sections 5-0418(A) SPECIFIC STANDARDS, Residential Construction, and 5-0418(B) SPECIFIC STANDARDS, Nonresidential Construction.

C. Information to be Obtained and Maintained

Information to be obtained and maintained with all elevation readings certified by registered professional surveyor, engineer or architect, and all compliance with floodproofing regulations to be certified by a registered professional engineer or architect.

1. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.
2. For all new or substantially improved floodproofed structures:
 - a. Verify and record the actual elevation (in relation to mean sea level), and
 - b. Verify that all structures (temporary or permanent) shall be constructed in accordance with the "Flood Proofing Code of the City of West Fargo" which is made a part of this ordinance by reference.
3. Maintain for public inspection all records pertaining to the provision of this ordinance.

D. Alteration of Watercourses

1. Notify adjacent communities and the North Dakota State Engineer prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
 3. Notify the appropriate water resource district prior to removal or placement of fill within 250 feet of the bank of a body of water during normal flow or stage.
- E. Interpretation of Flood Insurance Rate Map (FIRM) Boundaries.

Make interpretation where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 5-0416.

SOURCE: Ord. 778, Sec. 4 (2006).

5-0416. VARIANCE PROCEDURE.

A. Appeal Board

1. The City Commission as established by the City of West Fargo shall hear and decide appeals and requests for variances from the requirements of this ordinance.
2. The Commission shall hear and decide appeals when it is alleged there is an error in any requirements, decision, or determination made by the Building Administrator or City Engineer in the enforcement or administration of this ordinance.
3. Those aggrieved by the decision of the Board of City Commissioners, or any taxpayer, may appeal such decision to the appropriate court, as provided in North Dakota law.
4. In passing upon such applications, the City Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

- d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and flood plain management program;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
5. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base level, providing items a k of Section 5-0416(A) (4) have been fully considered. As the lot size increases beyond the one half acre, the technical justification required for issuing the variance increases.
6. Upon consideration of the factors of Section 5-0416(A) (4) and the purposes of this ordinance, the Board of City Commissioners may attach conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
7. The Building Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

B. Conditions for Variances

1. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
2. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
4. Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 5-0416(A)(4), or conflict with existing local laws or ordinances.
5. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

5-0417. PROVISIONS FOR FLOOD HAZARD REDUCTION -- GENERAL STANDARDS. In all areas of special flood hazards the following standards are required:

A. Anchoring

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement and capable of resisting the hydrostatic

and hydrodynamic loads. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

B. Construction Materials and Methods

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Utilities

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision Proposals

1. All subdivision proposals shall be consistent with the need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

4. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

SOURCE: Ord. 778, Sec. 5 (2006)

5-0418. PROVISIONS FOR FLOOD HAZARD REDUCTION--SPECIFIC STANDARDS. In all areas of special flood hazards where base flood elevation data has been provided as set in Section 5-0408 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or Section 5-0415(B), Use of Other Base Flood Data, the following provisions are required:

A. Residential Construction

1. Conform to structural and technical provisions set forth in the Flood Proofing Code of West Fargo.
2. Be designed so that the lowest foundation opening is at least two and one-half feet (2½') above the base flood elevation. Any basement area, together with attendant utilities and sanitary facilities, below that level shall be designed so that the structure is watertight without human intervention (i.e., the base or sill of all external openings such as windows and doors must be two and one-half feet (2½') above the 100-year base flood elevation). Basement walls shall be built with the capacity to resist hydrodynamic loads and the effects of buoyancy resulting from the 100-year frequency flood and shall be designed so that minimal structural damage will occur if this design is exceeded.
3. Be certified by a registered professional engineer that the floodproofing measures used in the structure satisfy the Flood Proofing Code.
4. The Building administrator shall verify that the structure has been built in accordance with the Flood Proofing Code.
5. Require within the AO and AH Zones on the FIRM that all new construction and improvements of residential structures have the lowest floor, (including basement) elevated on fill two feet (2') above the highest adjacent grade as high as the depth number specified in feet on the FIRM unless conforming to the provisions in the Flood Proofing Code.
6. Require within Zones AO and AH adequate drainage paths around slopes to guide flood waters around and away from proposed structures.

B. Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated on fill to at least one foot above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

1. Be floodproofed to at least two and one-half feet (2½') above the base flood elevation, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water;
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
3. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 5-0415.C.
4. Require within the AO and AH Zones on the FIRM that all new construction and improvements of nonresidential structures have the lowest floor, (including basement) elevated on fill two feet (2') above the highest adjacent grade as high as the depth number specified in feet on the FIRM, or together with attendant utility and sanitary facilities be completely floodproofed two feet over the base flood elevation to meet the flood proofing standards specified in number 1 above.

C. Manufactured Homes

1. Manufactured homes shall be anchored in accordance with Section 5-0417(A).
2. All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated on fill to at least two and one-half feet (2½') above the base flood elevation, and is securely anchored to an adequately anchored foundation system.

- D. All elevation readings required by this section shall be certified by a registered professional surveyor, engineer or architect, and all compliance with floodproofing regulations must be certified to by a registered professional engineer or architect.

SOURCE: Ord. 778, Sec. 6 (2006); Ord. 1017, Sec. 2 (2014)

5-0419. FLOODWAYS. Located within areas of special flood hazard established in Section 5-0408 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachment, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. If Section 5-0419(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 5-0417, 5-0418 and 5-0419.

5-0420. VALIDITY. If any section, clause, paragraph, provision, or portion of these regulations shall be held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, paragraph, provision, or portion of these regulations.

5-0421. PENALTY. Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

CHAPTER 5-05

INTERNATIONAL PROPERTY MAINTENANCE CODE

Source: Ord. 738, Sec. 1 (2005); Ord. 878, Sec. 1 (2011)

SECTIONS:

- 5-0501. Adoption of International Property Maintenance Code.
- 5-0502. Amendment to International Property Maintenance Code.
- 5-0503. Penalty.
- 5-0504. Appeals.

5-0501. **ADOPTION OF INTERNATIONAL PROPERTY MAINTENANCE CODE.** There is hereby adopted by reference by the Board of City Commissioners, for the purpose of prescribing regulations governing standards, relative to housing in the City of West Fargo, that certain code known as the International Property Maintenance Code, recommended and compiled by the International Code Council, being particularly the 2015 edition thereof, as the same are now established in said code, a copy of which is on file in the office of the Building Administrator for the City of West Fargo, with the exception of the sections hereinafter set forth affecting local conditions of the City of West Fargo, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Property Maintenance Code; the Board of City Commissioners of said City of West Fargo, by this section hereby approves and adopts such rules and regulations, so modified, for the use and application within the city limits of West Fargo, North Dakota. Provided, that any amendments of the 2015 edition of the Code may be adopted by the City by resolution.

Source: Ord. 1010, Sec. 1 (2014); Ord. 1087, Sec. 1 (2017)

5-0502. **AMENDMENT TO INTERNATIONAL PROPERTY MAINTENANCE CODE.** The International Property Maintenance Code, as adopted in Section 5-0501 is hereby changed and amended as follows:

SECTION 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the *Property Maintenance Code* of ~~[NAME OF JURISDICTION]~~ the City of West Fargo, hereinafter to as "this code."

SECTION 102.3 is hereby amended to read as follows:

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of ~~the International Building Code, International Energy Conservation Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Residential Code,~~

~~International Plumbing Code and the NFPA 70 all applicable ordinances adopted by the City of West Fargo. Nothing in this code shall be construed to cancel, modify or set aside any provision of the International Zoning Code.~~

SECTION 103.4 is hereby amended to read as follows:

R103.4 Liability. The building official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be ~~civilly or criminally~~ rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act or omission performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be afforded all the protection provided by the city's insurance pool and immunities and defenses provided by other applicable state and federal laws and shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

SECTION 103.4.1 is hereby deleted in its entirety.

SECTION 103.5 is added to read as follows:

103.5 Fees. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as indicated in the following schedule:

- A. Initial Inspection - No charge
- B. First Re-inspection - No charge
- C. Second Re-inspection - As to the second re-inspection, a fee of \$100
- D. Third Re-inspection - as to the third re-inspection, a fee of \$100

- E. Fourth and continuing Re-inspection - as to the fourth and any subsequent re-inspection, a fee of \$100

SECTION 111 is hereby deleted in its entirety.

SECTION 112.4 is hereby amended to read as follows:

112.4 Failure to comply. Any person who shall continue any work after been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be ~~liable to a fine of not less than [AMOUNT] dollars or more than [AMOUNT] dollars~~ subject to penalties prescribed by law.

SECTION 201.3 is hereby amended to add the following:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the *International Building Code, International Existing Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Plumbing Code, International Residential Code, ~~International Zoning Code~~* or NFPA 70, such terms shall have meanings ascribed to them as in those codes.

Throughout this code, wherever reference is made to the International Plumbing Code it shall mean the North Dakota State Plumbing Code. Throughout this code, wherever reference is made to the ICC Electrical Code it shall mean the National Electrical Code together with the North Dakota State Wiring Standards.

SECTION 302.4 is hereby amended to read as follows:

302.4 Weeds. All *premises and exterior property* shall be maintained free from weeds or plant growth ~~in excess of (jurisdiction to insert height in inches)~~ as per the City of West Fargo Ordinances. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens. Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with Section 106.3 and as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such

removal shall be paid by the owner or agent responsible for the property.

SECTION 304.14 is hereby amended to read as follows:

304.14 Insect screens. During the period from ~~{DATE}~~ April 1st to ~~{DATE}~~ October 31st, every door, window and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition.

Exception: Screens shall not be required where other approved means, such as air curtains or insect repellent fans, are employed.

SECTION 602.2 is hereby amended to read as follows:

602.2 Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms ~~based on the winter outdoor design temperature for the locality indicated in Appendix D of the International Plumbing Code.~~ Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

~~**Exception:** In areas where the average monthly temperature is above 30°F (-1°C), a minimum temperature of 65°F (18°C) shall be maintained.~~

SECTION 602.3 is hereby amended to read as follows:

602.3 Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from ~~{DATE}~~ September 15th to ~~{DATE}~~ June 1st to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, bathrooms, and toilet rooms.

Exceptions:

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room

temperature shall not be required provided that the heating system is operating at its full design capacity. ~~The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the International Plumbing Code.~~

- ~~2. In areas where the average monthly temperature is above 30°F (-1°C) a minimum temperature of 65°F (18°C) shall be maintained.~~

SECTION 602.4 is hereby amended to read as follows:

602.4 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from ~~[DATE]~~ September 15th to ~~[DATE]~~ June 1st to maintain a minimum temperature of 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

SECTION 603.2 is hereby amended to read as follows:

603.2 Removal of combustion products. All fuel-burning equipment and appliances shall be connected to an approved chimney or vent.

~~**Exception:** Fuel-burning equipment and appliances which are labeled for unvented operation.~~

Source: Ord. 1010, Sec. 2 (2014); Ord. 1087, Sec. 2 (2017)

5-0503. **PENALTY.** A violation of the regulations contained in this chapter shall be deemed an offense and shall be punishable by a fine of not to exceed Five Hundred Dollars (\$500). Each day that a violation is permitted to exist shall constitute a separate offense. The provisions of Section 1-0211 shall also apply.

5-0504. **Appeals.** A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The West Fargo City Commission shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The West Fargo City Commission shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Commission may only reverse or modify a decision of the Code Official by a vote of at least three

members of the Commission. If not all members of the Commission are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The commission shall have no authority to waive requirements of the Code.

CHAPTER 5-06

ALARM SYSTEMS

(Source: Ord. 602, Sec. 1 (2000))

SECTIONS:

- 5-0601. Definitions.
- 5-0602. Rules and Regulations.
- 5-0603. Annual Fee Assessed for Establishment of Alarm Sites.
- 5-0604. Prohibitions.
- 5-0605. False Alarms - Fee Assessed.
- 5-0606. Collection of Past Due Fees.
- 5-0607. Automatic Dialing Device - Interconnecting to Primary Trunklines.
- 5-0608. Automatic Dialing Device - Intermediary Services.
- 5-0609. Violation - Penalty.

5-0601. DEFINITIONS.

1. "Alarm user" shall mean any person as defined herein using the services of a police/fire alarm system or a central station monitoring said alarms which require the emergency response of law enforcement and/or fire department personnel.
2. "Answering service" refers to a telephone answering service which receives emergency signals from alarm systems, and thereafter immediately relays the message by live voice to the communications center of the police department.
3. "Automatic dialing device" refers to an automated alarm system which sends a prerecorded voice message or coded signal indicating the existence of the emergency situation which the alarm system is designed to detect.
4. "Central station" means an office to which remote alarm and supervisory signaling devices are connected and are supervised and maintained by operators.
5. "Central station system" means a system in which the operation of electrical protection circuits and devices are signaled automatically to, recorded in, maintained, and supervised from a central station having operators.
6. "Direct line" means a telephone line leading directly from a central station to the communication center of the

police department that is for use only to report emergency signals on a person to person basis.

7. "False alarm" means the activation of an alarm system caused by anything other than an emergency or criminal activity.
8. "Fire alarm system: shall mean any system or device designed for the detection of the presence of fire, smoke, or other dangerous condition and when activated emits a sound or transmits a signal or message by which the system alerts the West Fargo Police Department directly or causes the West Fargo Police Department to be alerted.
9. "Excessive alarms" shall mean false alarms in excess of three within any consecutive six month period.
10. "Person" shall mean any individual, partnership, corporation, association or other entity.
11. "Police alarm system" shall mean any system or device designed for the detection of an unauthorized entry on premises or for alerting others of the commission of an unlawful act, or both, and, when actuated, emits a sound or transmits a signal or message by which the system alerts the West Fargo Police Department directly, or causes the department to be alerted.
12. "Primary trunkline" means a telephone line leading directly into the communications center of the police department that is for the purpose of handling emergency calls on a specific number included among the emergency numbers listed in the telephone directory issued by the telephone company and covering the service area within the police department's jurisdiction.
13. "Proprietary system" means an alarm system sounding and/or recording alarm and supervisory signals at a control center located within the protected premises, the control center being under the supervision of the proprietor of the protected premises. If a proprietary system includes a signal line connected directly to the police communication center, a central station, or answering service, it thereby becomes an "alarm system" as defined in this ordinance.
14. "Special trunkline" means a telephone line leading into the communications center of the police department and having the primary purpose of handling emergency signals or message originating either directly or through a central location from automatic dialing devices.

5-0602. RULES AND REGULATIONS. The Chief of Police may prescribe rules and regulations for alarm systems, including, but not limited to, the following:

1. Minimum standards for the quality, efficiency, and effectiveness of police and fire alarm systems and alarm business permittees;
2. Specific provisions relating to testing procedures;
3. Minimum standards for the training of alarm business personnel.

The Chief of Police or designee is authorized to inspect or cause to be inspected the premises of the alarm business and the premises whereon the police alarm system is located. The Chief of Police or designee shall have the power to make and enforce such reasonable rules and regulations as may be necessary to implement the provisions of this section.

5-0603. ANNUAL FEE ASSESSED FOR ESTABLISHMENT OF ALARM SITES.

1. Any person, organization, business or establishment who establishes, installs, or connects any fire or security alarm system designed to directly notify the West Fargo Police Department of an emergency shall be assessed an annual fee, which will be set from time to time by resolution of the Board of City Commissioners. The annual fee is due and payable upon activation of the alarm site. An alarm site refers to the location of an alarm system. The fee schedule shall include an annual fee for the following categories of alarm system:
 - a. Alarm sites which are directly monitored by the system (hard wire) located at the police department.
 - b. Alarm sites which are connected by telephone lines through a commercial alarm notification system (auto dialer) to the police department.
 - c. Alarm sites which are connected by telephone lines and programmed to directly contact the police department.
2. Any person, organization, business or establishment who establishes any alarm site, as set forth above, shall notify the police department, in writing and on the approved form, within forty-eight (48) hours of the alarm site activation and shall pay the annual fee.

3. The City Auditor is authorized and directed to deposit the moneys received under this section in a separate account to be kept and administered by him under the directions of the Board, in the same manner as other public moneys are kept and administered. The funds in said account shall be used solely for the purpose of purchasing, maintaining and replacing any equipment or facilities used or useful in providing the monitoring, dispatch and response services of the police and fire department.

5-0604. PROHIBITION.

1. No person, organization, business or establishment may connect any alarm system to the City's 911 emergency system.
2. It shall be unlawful for anyone to activate any police alarm for the purpose of summoning police except in the event of what is reasonably believed to be an unlawful act and/or an unauthorized entry on premises. Whenever a police alarm system has been designed and commonly understood to alert others of the commission of a particular crime, it shall be unlawful for anyone to activate such police alarm system for the purpose of summoning police except in the event of what is reasonably believed to be such particular crime.
3. It shall be unlawful to install or use a police alarm system which upon activation emits a sound similar to sirens in use on emergency vehicles or civil defense purposes.

5-0605. FALSE ALARMS - FEE ASSESSED.

1. In the event that any false alarm, as defined above, occurs and results in the dispatch and response of the police and/or fire department, the responding department shall notify the City Auditor.
2. Any alarm site which has more than three false alarms in any consecutive 45 days shall be assessed a fee for each false alarm in excess of three.
3. The fee shall be established by resolution of the Board of City Commissioners.

Source: Ord. 796, Sec. 1 (2007)

5-0606. COLLECTION OF PAST DUE FEES. In the event that annual or false alarm fees established by resolution of the Board

of City Commissioners are not paid when due, such fees may be recovered by the City in an action at law against the owner of the alarm site; or such fees may be assessed against the premises served by the alarm site and collected and returned in the same manner as other county and municipal taxes and assessments are assessed, certified, collected and returned.

5-0607. AUTOMATIC DIALING DEVICE - INTERCONNECTING TO PRIMARY TRUNKLINE.

1. No automatic dialing device shall be interconnected to a primary trunkline after the effective date of this ordinance.
2. Within ninety (90) days after the effective date of this ordinance, all automatic dialing devices interconnected to a primary trunkline shall be disconnected therefrom. The owner or lessee of such device shall be responsible for having the device disconnected within the 90-day time period described herein.

5-0608. AUTOMATIC DIALING DEVICE - INTERMEDIARY SERVICES.

1. Persons owning or leasing an automatic dialing device may have the device interconnected to a telephone line transmitting directly to:
 - a. A central station;
 - b. A modified central station; or
 - c. A licensed answering service.
2. The relaying of messages by intermediary services to the police department shall be over a special trunkline, except that central stations may relay messages over a direct line on a person-to-person basis.
3. This section shall apply only to those automatic dialing services interconnected to the communication center in the police department or to other municipal offices.

5-0609. VIOLATION - -PENALTY. Any person, organization, business or establishment who fails to notify the police department within forty-eight (48) hours of an alarm site activation, fails to pay the annual assessment or false alarm fee, or connects any alarm system to the City's 911 emergency system shall be guilty of an infraction punishable by a fine not to exceed five hundred dollars (\$500).

CHAPTER 5-07

INTERNATIONAL RESIDENTIAL CODE

Source: Ord. 739, Sec. 1 (2005); Ord. 879, Sec. 1 (2011)

SECTIONS:

- 5-0701. Adoption of International Residential Code.
 - 5-0702. Amendment to International Residential Code.
 - 5-0703. Penalty.
 - 5-0704. Fee for Copy of Relevant Code Provisions.
 - 5-0705. Appeals.
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5-0701. ADOPTION OF INTERNATIONAL RESIDENTIAL CODE. There is hereby adopted by reference by the Board of City Commissioners, for the purpose of prescribing regulations governing standards, relative to housing in the City of West Fargo, that certain code known as the International Residential Code, recommended and compiled by the International Code Council, being particularly the 2015 edition thereof, as the same are now established in said code, a copy of which is on file in the office of the Building Administrator for the City of West Fargo, with the exception of the sections hereinafter set forth affecting local conditions of the City of West Fargo, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Residential Code; the Board of City Commissioners of said City of West Fargo, by this section hereby approves and adopts such rules and regulations, so modified, for the use and application within the city limits of West Fargo, North Dakota, as well as for any area within the extraterritorial zoning jurisdiction of the City. Provided, that any amendments of the 2015 edition of the Code may be adopted by the City by resolution.

Source: Ord. 1011, Sec. 1 (2014); Ord. 1088, Sec. 1 (2017)

5-0702. AMENDMENT TO INTERNATIONAL RESIDENTIAL CODE. The International Residential Code, as adopted in Section 5-0701 is hereby changed and amended as follows:

SECTION R101.1 is hereby amended to read as follows:

R101.1 Title. These provisions shall be known as the *Building Code of ~~[(NAME OF JURISDICTION)] the City of West Fargo,~~* and shall be cited as such and will be referred to herein as "this code."

SECTION R104.8 is hereby amended to read as follows:

R104.1 General. The *building official*, member of the board of appeals or employee charged with the enforcement of this code. While acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or

ordinance, shall not thereby be ~~civilly or criminally~~ rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act or omission performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be afforded all the protection provided by the city's insurance pool and immunities and defenses provided by other applicable state and federal laws and shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The *building official* or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

SECTION R104.8.1 is hereby deleted in its entirety.

SECTION R104.10.1 is hereby deleted in its entirety.

SECTION R105.2 is hereby amended to read as follows:

R105.2 Work exempt from permit. Exemptions . . .

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses, and similar uses, provided the floor area is not greater than 120 square feet (11 m₂).
2. Fences not over ~~7~~ 8.5 feet ~~(2134~~ 2591 mm) high.
3. Retaining walls that are not . . .
7. ~~Prefabricated S~~swimming pools that are less than 24 inches (610 mm) deep. . . .
10. Decks not exceeding ~~200~~ 120 square feet ~~(18.58 m²)~~ in area, that are not more than ~~30~~ 7 inches ~~(762 mm)~~ above grade at any point, are not attached to a dwelling and do not serve the exit door required by Section R311.4.

SECTION R105.3.1 is hereby deleted in its entirety.

SECTION R106.1.4 is hereby deleted in its entirety.

SECTION R108.3 is hereby amended to read as follows:

R108.3 Building permit valuations. Building permit valuation shall include total value of the work for which a permit is being issued, such as electrical, gas, mechanical, plumbing equipment and other permanent systems, including materials and labor. If, in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official.

SECTION R201.3 is hereby amended to read as follows:

Section R201.3 Terms defined in other codes. Where terms are not defined in this code such terms shall have meanings ascribed to them as in other code publications of the International Code Council. Wherever the term "International Plumbing Code" and/or "International Private Sewage Disposal Code" is used in the International Residential Code, it shall mean the North Dakota State Plumbing Code. Wherever the term 'ICC Electrical Code' is used in the International Residential Code, it shall mean the National Electrical Code together with the North Dakota State Wiring Standards. Wherever reference is made to flood plain requirements, it shall mean the West Fargo Flood Damage Prevention Ordinance together with the West Fargo Flood Proofing Code.

TABLE R301.2.1 is hereby amended to read as follows:

GROUND SNOW LOAD	WIND SPEED				SEISMIC DESIGN CATEGORY ^f	SUBJECT TO DAMAGE FROM		
	Speed ^d (mph)	Topographic effects ^k	Special wing region ^l	Wind- borne debris zone ^m		Weathering ^a	Frost line depth ^b	Termite ^c
50 psf	115	no	no	no	Zone A	Severe	4.5 feet	none

WINTER DESIGN TEMP ^e	ICE BARRIER UNDERLAYMENT REQUIRED	Flood HAZARDS ^g	AIR FREEZING INDEX ^l	MEAN ANNUAL TEMP ^j
-18	YES	1978	4000	41.5

SECTION R301.2.4 is hereby deleted in its entirety.

TABLE R302.1(1) is hereby amended to read as follows:

**TABLE 302.1(1)
EXTERIOR WALLS**

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls ^c	Fire-resistance rated	1 hour - tested in accordance with ASTM E 119 or UL 263 with exposure from both sides	< 5 <u>3</u> feet
	Not fire-resistance rated	0 hours	≥ 5 <u>3</u> feet
Projections	Not allowed	N/A	< 2 feet
	Fire-resistance rated	1 hour on the underside ^{a b}	≥ <u>2</u> feet to < 5 <u>3</u> feet
	Not fire-resistance rated	0 hours	5 <u>3</u> feet
Openings	Not allowed	N/A	< 3 feet
	25% Maximum of Wall Area	0 hours	3 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section 304.2	< 3 feet
		None Required	3 feet

For SI: 1 foot = 304.8 mm.

N/A = Not Applicable.

a. Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave if fireblocking is provided from the all top plate to the underside of the roof sheathing.

b. Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave provided that gable vent openings are not installed.

c. A common 2-hour fire-resistance-rated wall assembly is permitted for two or more family dwellings where the common wall is on a property line provided such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. Electrical installations shall be installed in accordance with national Electrical Code together with the North Dakota State Wiring Standards. Penetrations of electrical outlet boxes shall be in accordance with Section 302.4

SECTION R302.2 is hereby amended to read as follows:

R302.2 Townhouses. Common walls separating townhouses . .
.

1. . . .

2. Where a fire sprinkler system in accordance with Section P2904 is not provided, the common wall shall be not less than a 2-hour fire-resistance-rated wall assembly or two 1-hour-fire-resistance wall assemblies tested in accordance with ASTM E 119 or UL 263

SECTION R302.5.1 is hereby amended to read as follows:

R302.5.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 13/8 inches (35 mm) in thickness, solid or honeycomb-core steel doors not less than 13/8 inches (35 mm) thick, ~~or 20-minute fire-rated doors, equipped with a self-closing device.~~

SECTION R303.4 is hereby deleted in its entirety.

SECTION R307.1 is hereby amended to read as follows:

Section R307.1 Space required. Fixtures shall be spaced in accordance with ~~Figure R307.1, and in accordance with the requirements of Section P2705.1~~ the North Dakota State Plumbing code and per Figure R30701, with the exception of the clearance in front of water closets and bidets which shall be 24 inches.

SECTION R309.3 is hereby deleted in its entirety.

SECTION R310.2.2 is hereby amended to read as follows:

R310.2.2 Window sill height. Where a window is provided as the emergency escape and rescue opening, it shall have a sill height of not more than 44 inches (1118 mm) above the floor; where the sill height is below grade, it shall be provided with a window well in accordance with Section R310.2.3. Sill height shall be measured from the finished floor to the bottom of the clear opening.

Exception: Below grade emergency escape and rescue windows may have a maximum sill height of 48 inches.

SECTION R310.2.3.1 is hereby amended to read as follows:

R310.2.3.1 Ladder and steps. Window wells with a vertical depth greater than 44 inches (1118 mm) shall be equipped with a permanently affixed ladder or steps usable with the window in the fully open position, ~~or shall be equipped with a permanently-attached platform at least 30 inches by 16 inches.~~ The maximum distance between the top of the

window well and a platform shall be 42 inches and shall not impede the operation of the window. Ladders or steps required by this section shall not be required to comply with Sections R311.7 and R311.8. Ladders or rungs shall have an inside width of not less than 12 inches (305 mm), shall project not less than 3 inches (76 mm) from the wall and shall be spaced not more than 18 inches (457 mm) on center vertically for the full height of the window well.

Exception: Terraced window wells with a maximum of 24 inches per vertical rise and minimum 12 inches per horizontal projection on each level shall also be allowed.

SECTION R311.3 is hereby amended to read as follows:

R311.3 Floors and landings at exterior doors. There shall be a landing or floor on each side of each exterior door. The width of each landing shall be not less than the door served. Every landing shall have a dimension of not less than 36 inches (914 mm) measured in the direction of travel. The slope at exterior landings shall not exceed 1/4 unit vertical in 12 units horizontal (2 percent).

Exceptions:

1. Exterior balconies less than 60 square feet (5.6 m²) and only accessible from a door are permitted to have a landing less than 36 inches (914 mm) measured in the direction of travel.
2. A landing is not required on the outside of exterior doors other than the required egress door, where a stairway with a total rise of less than 30 inches (762 mm) is located on the exterior side of the door, provided the door does not swing over the stairway.

SECTION R311.3.1 is hereby amended to read as follows:

R311.3.1 Floor elevations at the required egress doors. Landings or finished floors at the required egress door shall not be more than 1 1/2 inches (38 mm) lower than the top of the threshold.

Exception: The landing or floor on the exterior side shall not be more than ~~7 3/4~~ 8 inches ~~(196 mm)~~ below the top of the threshold provided the door does not swing over the landing or floor.

Where exterior landings or floors serving the required egress door are not at *grade*, they shall be provided with access to *grade* by means of a ramp in accordance with

Section R311.8 or a stairway in accordance with Section R311.7.

SECTION R311.3.2 is hereby amended to read as follows:

R311.3.2 Floor elevations for other exterior doors. Doors other than the required egress door shall be provided with landings or floors not more than ~~7³/₄~~ 8 inches (~~196 mm~~) below the top of the threshold.

Exception: A ~~top~~ landing is not required where a stairway ~~of not more than two risers with a total rise of not less than 30 inches (762 mm)~~ is located on the exterior side of the door, provided that the door does not swing over the stairway.

SECTION R311.7.5.1 is hereby amended to read as follows:

Section R311.7.5.1 Risers. The riser height shall be not more than ~~7³/₄~~ 8 inches (~~196 mm~~). The riser shall . . .

SECTION R311.7.5.2 is hereby amended to read as follows:

Section R311.7.5.2 Treads. The tread depth shall be not less than ~~10~~ 8 inches (~~254 mm~~). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

Exception: Where a landing is not provided or required by Section R311.3, R311.3.2 or R311.7.6, the top tread of a stair serving exterior doors other than the required exit door, and in-swinging doors opening into an attached garage, shall be permitted to exceed the smallest tread by more than 3/8 inch (9.5 mm). Such a tread shall be at least 18 inches (457 mm) measured in the direction of travel.

SECTION R311.7.5.2.1 is hereby amended to read as follows:

R311.7.5.2.1 Winder treads. Winder treads shall have a minimum tread depth of ~~10~~ 9 inches (~~254 mm~~) measured between the vertical planes of the foremost projection of adjacent treads at the intersections with the walkline. Winder treads shall have a read depth of . . .

SECTION R311.7.6 is hereby amended to read as follows:

Section R311.7.6 Landings for stairways. There shall be a floor or landing at the top and bottom of each stairway.

The width perpendicular to the direction of travel shall be not less than the width of the flight served. Landings of shapes other than square or rectangular shall be permitted provided that the depth at the walk line and the total area is not less than that of a quarter circle with a radius equal to the required landing width. Where the stairway has a straight run, the depth in the direction of travel shall be not less than 36 inches (914 mm).

Exception:

1. A floor or landing is not required at the top of an interior flight of stairs, including stairs in an enclosed garage, provided a door does not swing over the stairs.
2. A landing is not required at the top of an exterior flight of stairs with a total rise of less than 30 inches, provided the door does not swing over the stairway.

SECTION R312.1.1 is hereby amended to read as follows:

R312.1.1 Where Required. Guards shall be located along open-sided walking surfaces, ~~including stairs, ramps and landings that are located more than 30 inches (762 mm) measured vertically to the floor or grade below. at any point within 36 inches (914 mm) horizontally to the edge of the open side.~~ Insect screening shall not be considered as a guard.

SECTION R313.1 is hereby amended to read as follows:

R313.1 Townhouse automatic fire sprinkler systems. An automatic residential fire sprinkler system shall be installed in townhouses where the townhouses are located on a private street or private fire department access road that is required to greater than 150 feet in length as required by Section 503 of the International Fire Code.

SECTION R313.1.1 is hereby amended to read as follows:

R313.1.1 Design and installation. Automatic residential fire sprinkler systems for townhouses shall be designed and installed in accordance with ~~Section P2904 or NFPA 13D,~~ NFPA 13R or NFPA 13.

SECTION R313.2 is hereby deleted in its entirety.

SECTION R313.2.1 is hereby deleted in its entirety.

SECTION R314.3 is hereby amended to read as follows:

R314.3 Location. Smoke alarms shall be installed in the following locations:

1. In each sleeping room.
5. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by 24 inches (610 mm) or more, smoke alarms shall be installed in the hallway and the adjacent room.

SECTION R322 is hereby deleted in its entirety.

SECTION R326 is hereby deleted in its entirety.

SECTION R401.1 is hereby amended to read as follows:

R401.1 Application. The provisions of this chapter shall control the design and construction of the foundation and foundation spaces for all buildings. In addition to the provisions of this chapter, the design and construction of foundations in flood hazard areas ~~as established by Table R301.2(1)~~ shall meet the provisions of ~~Section R322~~ the West Fargo Flood Proofing Code (Section 5-04) and any other applicable requirements of the City of West Fargo. Wood foundations shall be designed and installed in accordance with AWC PWF.

Exception: The provisions of this chapter shall be permitted . . .

SECTION R401.3 is hereby amended to read as follows:

R401.3 Drainage. Surface drainage shall be diverted to a storm sewer conveyance or other *approved* point of collection that does not create a hazard. *Lots* shall be graded to drain surface water away from foundation walls. ~~The grade shall fall a minimum of 6 inches (152mm) within the first 10 feet (3048mm).~~

~~Exception: Where lot lines, walls, slopes or other physical barriers prohibit 6 inches (152mm) of fall within 10 feet (3048mm), drains or swales shall be constructed to ensure drainage away from the structure. Impervious surfaces within 10 feet (3048 mm) of the building foundation shall be sloped a minimum of 2 percent away from the building.~~

SECTION R403.1.4.1 is hereby amended to read as follows:

Section R403.1.4.1 Frost protection. Except where otherwise protected from frost, foundation walls, piers and other permanent supports of buildings and structures shall be protected from frost by one or more of the following methods:

1. Extended below the frost line . . .

Exceptions:

1. Protection of freestanding accessory structures with an area of 600 square feet (56 m²) or less of light framed construction and an eave height of 10 feet (3048 mm) or less shall not be required.
2. Protection of freestanding accessory structures with an area of 400 square feet (37 m²) or less, of other than light-framed construction, with an eave height of 10 feet (3048 mm) or less shall not be required.
3. Decks not supported by a dwelling need not be provided with footings that extend below the frost line.

Footings shall not bear on frozen soil unless the frozen condition is permanent.

SECTION R404.1.3.2 is hereby amended to read as follows:

R404.1.3.2 Reinforcement for foundation walls. Concrete foundation walls shall be laterally supported at the top and bottom. Horizontal reinforcement shall be provided in accordance with Table R404.1.2(1). Vertical reinforcement shall be provided in accordance with Table R404.1.2(2), R404.1.2(3), R404.1.2(4), R404.1.2(5), R404.1.2(6), R404.1.2(7), or R404.1.2(8), or Table R404.1.2(10) and Figure R404.1.2(1) or Table R404.1.2(11) and Figure R404.1.2(2). Vertical reinforcement for flat basement walls retaining 4 feet (1219 mm) or more of unbalanced backfill is permitted to be determined in accordance with Table R404.1.2(9). For basement walls supporting above grade concrete walls, vertical reinforcement shall be the greater of that required by Tables R404.1.2(2) through R404.1.2(8) or by Section R608.6 for the above-grade wall. In buildings assigned to Seismic Design Category D₀, D₁ or D₂, concrete foundation walls shall also comply with Section R404.1.4.2.

Table R404.1.2(10) is hereby adopted as follows:

Table R404.1.2(10)

Foundation Wall Reinforcing

Active Pressure = 45pcf

Minimum Reinforcement for Concrete		
Foundation Walls		
Wall Height (h) feet	Wall Thickness (t) inches	Vertical Reinforcing
8	8	#4 @ 24" o.c.
	10	#5 @ 40" o.c.
		#4 @ 30" o.c.
9	8	#5 @ 50" o.c.
	10	#4 @ 18" o.c.
		#5 @ 28" o.c.
10	10	#4 @ 24" o.c.
		#5 @ 36" o.c.
	10	#4 @ 16" o.c.
		#5 @ 26" o.c.

Notes:

1. Chart is based on an active soil pressure of 45 pounds per cubic foot (pcf).
2. Reinforcing steel shall be ASTM A615 Fy - 60,000 pounds per square inch (psi).
3. The vertical reinforcing bars are to be located on the inside face.
4. Minimum concrete strength $F_c^1 = 3,000$ pounds per square inch (psi).
5. Backfill shall not be placed until first floor framing and sheathing is installed and fastened or adequately braced and the concrete floor slab is in place or the wall is adequately braced.

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TABLE R404.1.2(11) is added as follows:

Table R404.1.2(11)

Foundation Wall Reinforcing

Active Pressure = 65 pcf

Minimum Reinforcement for Concrete		
Foundation Walls		
Wall Height (h) Feet	Wall Thickness (t) inches	Vertical Reinforcing
8	8	#4 @ 18" o.c.
		#5 @ 26" o.c.
		#6 @ 40" o.c.
	10	#4 @ 24" o.c.
		#5 @ 36" o.c.
		#6 @ 52" o.c.
9	8	#4 @ 12" o.c.
		#5 @ 18" o.c.
		#6 @ 26" o.c.
	10	#4 @ 16" o.c.
		#5 @ 24" o.c.
		#6 @ 36" o.c.
10	10	#4 @ 12" o.c.
		#5 @ 18" o.c.
		#6 @ 24" o.c.

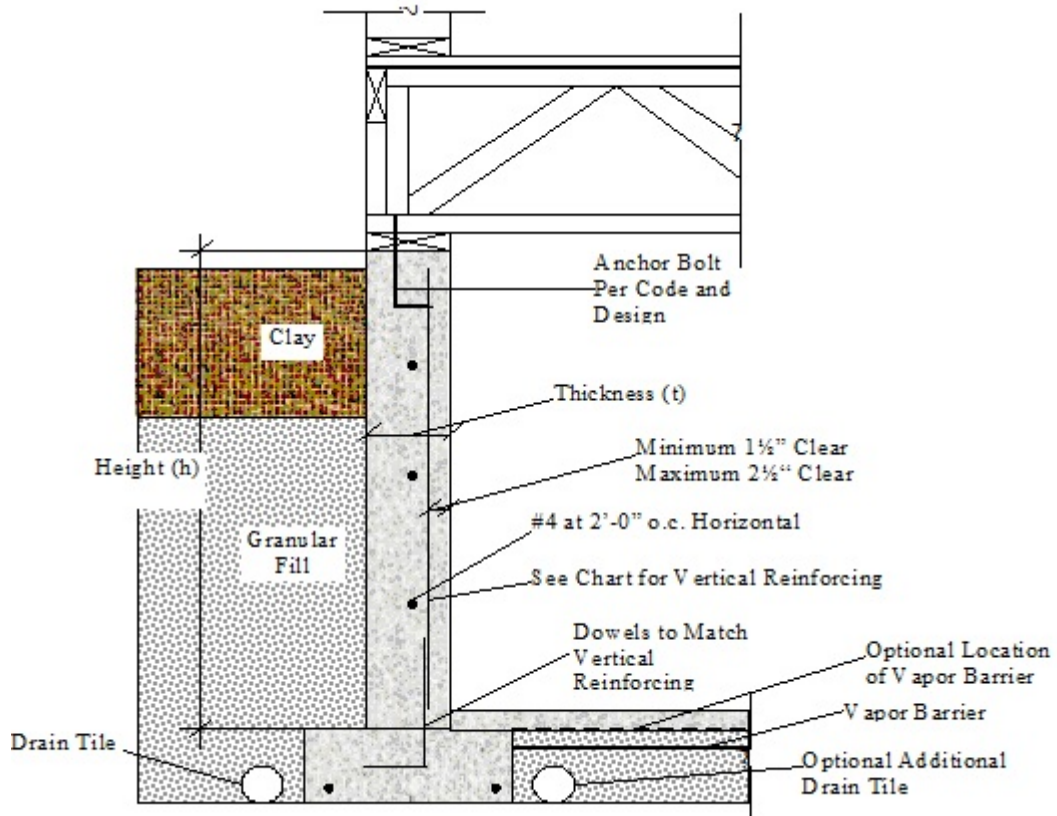
Notes:

1. Chart is based on an active soil pressure of 65 pounds per cubic foot (pcf).
2. Reinforcing steel shall be ASTM A615 Fy - 60,000 pounds per square inch (psi).
3. The vertical reinforcing bars are to be located on the inside face.
4. Minimum concrete strength $F_c^1 = 3,000$ pounds per square inch (psi).
5. Backfill shall not be placed until first floor framing and sheathing is installed and fastened or adequately

braced and the concrete floor slab is in place or the wall is adequately braced.

Figures R404.1.2(1) is hereby adopted as follows:

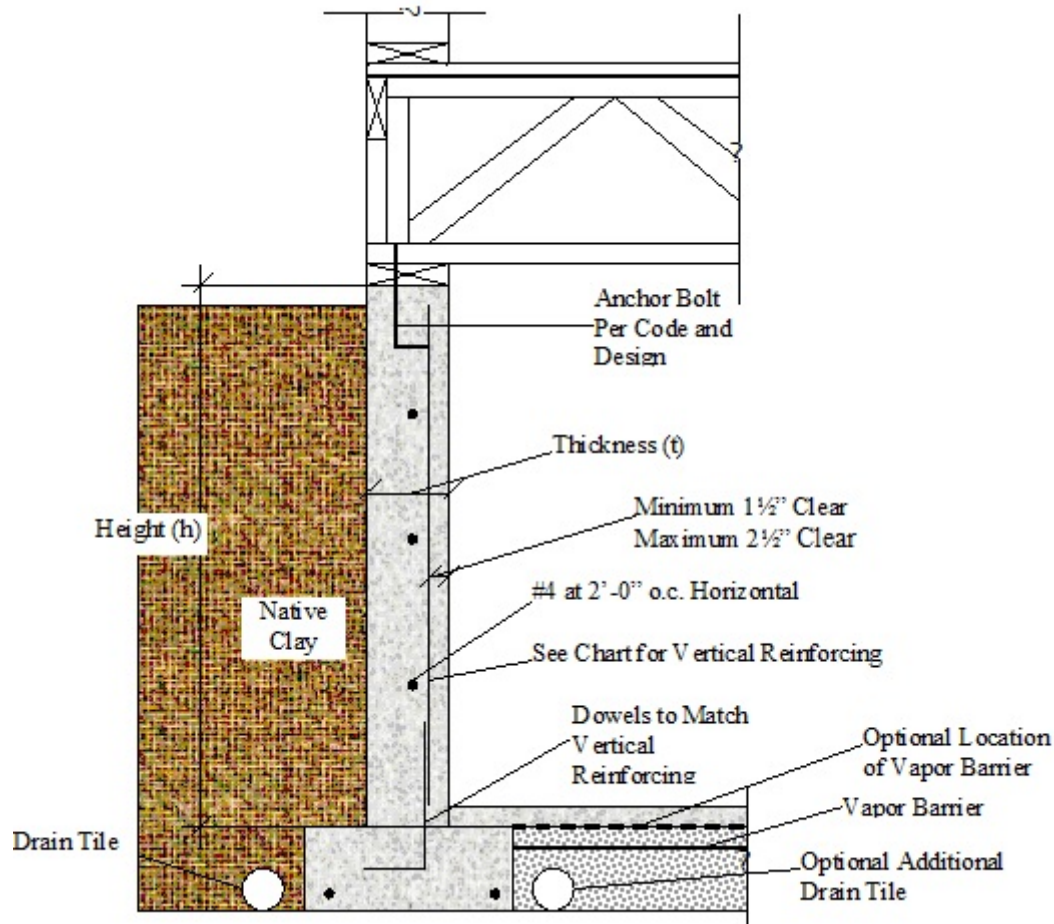
FIGURE R404.1.2 (1)



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FIGURE 404.1.2(2) is hereby adopted as follows:

FIGURE R404.1.2(2)



SECTION R405.2.3 is hereby amended to read as follows:

Section R405.2.3 Drainage system. In other than Group I soils, a sump shall be provided to drain the porous layer and footings. The sump shall be not less than ~~24 18~~ inches ~~(610 mm)~~ in diameter or ~~20 16~~ inches square ~~(0.0129m²)~~, shall extend not less than 24 inches (610 mm) below the bottom of the *basement* floor and shall be capable of positive gravity or mechanical drainage to remove any accumulated water. The drainage system shall discharge into an *approved* sewer system or to daylight.

SECTION R507.8.1 is hereby deleted in its entirety.

SECTION R602.7.2 is hereby amended to read as follows:

R602.7.2 Rim board headers. Rim board header size, material and span shall be in accordance with Table R602.7(1). Rim board headers shall be constructed in accordance with Figure R602.7.2 and shall be supported at each end by full-height studs. ~~The number of full-height studs at each end shall be not less than the number of studs displaced by half of the header span based on the maximum stud spacing in accordance with Table R602.3(5).~~ Rim board headers supporting concentrated loads shall be designed in accordance with accepted engineering practice.

SECTION R602.7.5 is hereby amended to read as follows:

R602.7.5 Supports for headers. Headers shall be supported on each end with one or more jack studs or with approved framing anchors in accordance with Table R602.7(1) or R602.7(2). The full-height stud adjacent to each end of the header shall be end nailed to each end of the header with four-16d nails (3.5 inches × 0.135 inches). ~~The minimum number of full-height studs at each end of a header shall be in accordance with Table R602.7.5.~~

TABLE R602.7.5 is hereby deleted in its entirety.

SECTION R602.10 is hereby amended to read as follows:

R602.10 Braced wall lines. For the purpose of determining the amount and location of bracing required in each story level of a building, *braced wall lines* shall be designated as straight lines in the building plan placed in accordance with this section.

Exception: The wall bracing requirements of Section R602.10 of the 2006 International Residential Code may be used as an alternative to this section.

SECTION R703.7.2 is hereby amended to read as follows:

Section R703.7.2 Plaster. Plastering with portland cement plaster shall be not less than three coats where applied over metal lath or wire lath and shall be not less than two coats where applied over masonry, concrete, pressure-preservative treated wood or decay-resistant wood as specified in Section R317.1 or gypsum backing. If the plaster surface is completely covered by veneer or other facing material or is completely concealed, plaster application need be only two coats, provided the total thickness is as set forth in Table 702.1(1). Approved decorative coatings applied to a concrete or masonry surface shall be installed in accordance with the manufacturer's installation instructions.

SECTION R806.1 is hereby amended to read as follows:

R806.1 Ventilation required. Enclosed attics and enclosed rafter spaces formed where ceilings are applied directly to the underside of roof rafters shall have cross ventilation for each separate space by ventilating openings protected against the entrance of rain or snow. Ventilation openings shall have a least dimension of 1/16 inch (1.6 mm) minimum and 1/4 inch (6.4 mm) maximum. Ventilation openings having a least dimension larger than 1/4 inch (6.4 mm) shall be provided with corrosion-resistant wire cloth screening, hardware cloth or similar material with openings having a least dimension of 1/16 inch (1.6 mm) minimum and 1/4 inch (6.4 mm) maximum. Openings in roof framing members shall conform to the requirements of Section R802.7. Required ventilation openings shall open directly to the outside air.

Exception: Attic ventilation shall not be required when determined to not be necessary by the building official due to atmospheric or climatic conditions.

SECTION R905.2.5 is hereby amended to read as follows:

R905.2.5 Fasteners. Fasteners for asphalt shingles shall be galvanized steel, stainless steel, aluminum or copper roofing nails, minimum 12 gage [0.105 inch (3 mm)] shank with a minimum 3/8 inch diameter (9.5 mm) head, complying with ASTM F 1667, of a length to penetrate through the roofing materials and not less than 3/4 inch (19.1 mm) into the roof sheathing or other fasteners as approved by the building official and shingle manufacturer. Where the roof sheathing is less than 3/4 inch (19.1 mm) thick, the fasteners shall penetrate through the sheathing.

SECTION R908 is hereby deleted in its entirety and relocated to the Appendices as Appendix R.

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TABLE N1102.1.2 (R402.1.2) is hereby amended to read as follows:

TABLE N1102.1.2 (R402.1.2) INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT ^a										
CLIMATE ZONE	FENESTRATION U-FACTOR ^b	SKYLIGHT ^b U-FACTOR ^b	GLAZED FENESTRATION SHGC ^{b,c}	CEILING R-VALUE	WOOD FRAMED WALL R-VALUE	MASS WALL R-VALUE ⁱ	FLOOR R-VALUE	BASEMENT ^c WALL R-VALUE	SLAB ^d R-VALUE AND DEPTH	CRAWL SPACE ^c WALL R-VALUE
1	NR	0.75	0.25 ^j	30	13	3/4	13	0	0	0
2	0.40	0.65	0.35	38	13	4/6	13	0	0	0
3	0.35	0.55	0.35	38	20 or 13 + 5 ^h	7/13	19	5/13 ^f	0	5/13
4 except Marine	0.35	0.55	0.40	49	20 or 13 + 5 ^h	8/13	19	10/13	10, 2 ft.	10/13
5 and Marine 4	0.32	0.55	NR	39	20 or 13 + 5 ^h	13/17	30 ^f	15/19	10, 2 ft.	15/19
6	0.32	0.55	NR	19	20 + 5 or 13 + 10^h 20 or 13 + 5 ^{h,i}	15/20	30 ^g	15/19 10/13	10, 4 ft.	15/19
7 and 8	0.32	0.55	NR	49	20 + 5 or 13 + 10^h 20 or 13 + 5 ^{h,i}	19/21	38 ^g	15/19 10/13	10, 4 ft.	15/19

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TABLE N1102.1.4 (R402.1.4) is hereby amended to read as follows:

TABLE N1102.1.4 (R402.1.4) EQUIVALENT U-FACTORS ^a								
CLIMATE ZONE	FENESTRATION U-FACTOR ^b	SKYLIGHT ^b U- FACTOR ^b	CEILIN G U- FACTO R	WOOD FRAMED WALL U- FACTOR	MASS WALL U- FACTOR ^b	FLOOR U- FACTOR	BASEMENT ^c WALL U-FACTOR	CRAWL SPACE WALL U- FACTOR
1	0.50	0.75	0.035	0.084	0.197	0.064	0.360	0.477
2	0.40	0.65	0.030	0.084	0.165	0.064	0.360	0.477
3	0.35	0.55	0.030	0.060	0.098	0.047	0.91 ^c	0.136
4 except Marine	0.35	0.55	0.026	0.060	0.098	0.047	0.059	0.065
5 and Marine 4	0.32	0.55	0.026	0.060	0.082	0.033	0.050	0.055
6	0.32	0.55	0.026	0.045 <u>0.057i</u>	0.060	0.033	0.05 <u>0.059</u>	0.055
7 and 8	0.32	0.55	0.026	0.045 <u>0.057</u>	0.057	0.028	0.05 <u>0.059</u>	0.055

SECTION N1102.1 (R402.4) is hereby amended to read as follows:

N1102.4 (R402.4) Air leakage (Mandatory). The *building thermal envelope* shall be constructed to limit air leakage in accordance with the requirements of Sections N1102.4.1 through N1102.4.5. Dwelling units of R-2 Occupancies and multiple single family dwellings shall be permitted to comply with IECC C402.5.

SECTION N1102.4.4.2 (R402.4.1.2) is hereby amended to read as follows:

N1102.4.1.2 (R402.4.1.2) Testing. The building or dwelling unit shall be tested and verified as having an air leakage rate of not exceeding five air changes per hour in Climate Zones 1 and 2, and three air changes per hour in Climate ~~Zones 3~~ through 8. Testing shall be conducted in accordance with ASTM E 779 or ASTM E 1827 and ...

SECTION N1102.4.1.3 (R402.4.1.3) is hereby added to read as follows:

N1102.4.1.3 (R402.4.1.3) Visual inspection option. Building envelope tightness and insulation shall be considered acceptable when installed in accordance with Table N1102.4.1.1 (R402.4.1.1) - "Air Barrier and Insulation" and has been field verified.

SECTION N1103.3.2 (R403.3.2) is hereby amended to read as follows:

N1103.3.2 (R403.3.2) Sealing (Mandatory). Ducts, air handlers and filter boxes shall be sealed. Joints and seams shall comply with either the *International Mechanical Code* or Section M1601.4.1 of this code, as applicable.

Exceptions:

1. Air-impermeable spray foam products shall be permitted to be applied without additional joint seals.
2. For ducts having a static pressure classification of less than 2 inches of water column (500 Pa), additional closure systems shall not be required for continuously welded joints and seams, and locking-type joints and seams ~~of other than the snap lock and button lock types.~~

SECTION N1103.3.5 (R403.3.5) is hereby amended to read as follows:

N1103.3.5 (R403.3.5) Building cavities (Mandatory). Building framing cavities shall not be used as supply ducts ~~or plenums.~~

SECTION N1103.6 (R403.6) is hereby amended to read as follows:

N1103.6 (R403.6) ~~Mechanical~~ Vventilation (Mandatory). The building shall be provided with ventilation that meets the requirements of Section M1507 of this code or the *International Mechanical Code*, as applicable, or with other approved means of ventilation. Outdoor air intakes and exhausts shall have automatic or gravity dampers that close when the ventilation system is not operating.

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TABLE N1105.5.2 (1) [R405.5.2 (1)] is hereby amended to read as follows:

TABLE N1105.5.2(1) [R405.5.2(1)] SPECIFICATIONS FOR THE STANDARD REFERENCE AND PROPOSED DESIGNS		
BUILDING COMPONENT	STANDARD REFERENCE DESIGN	PROPOSED DESIGN
...
Air exchange rate	Air leakage rate of 5 air changes per hour in Climate Zones 1 and 2 and 3 air changes per hour in Climate Zones 3 through 8 at a pressure of 0.2 inches w.g changes per hour in Climate Zones 3 through 8 at a pressure of 0.2 inches w.g (50 Pa). The mechanical ventilation rate shall be in addition to the air leakage rate and the same as in the proposed design, but no greater than $0.01 \text{ CFA} + 7.5 \times (\text{Nbr} + 1)$ where: CFA = conditioned floor area Nbr = number of bedrooms Energy recovery shall not be assumed for mechanical ventilation.	For residences that are not tested, the same air leakage rate as the standard reference design. For tested residences, the measured air exchange rate ^a . The mechanical ventilation rate ^b shall be in addition to the air leakage rate and shall be as proposed.
...

SECTION M1301.1.1 is hereby deleted in its entirety.

SECTION M1401.5 is hereby deleted in its entirety.

SECTION M1502.4.2 is hereby amended to read as follows:

M1502.4.2 Duct installation. Exhaust ducts shall be supported at intervals not to exceed 12 feet (3658 mm) and shall be secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Exhaust duct joints ~~shall be sealed in accordance with Section M1601.4.1 and shall may be~~ mechanically fastened. Ducts shall not be joined with screws ~~or similar fasteners that protrude more than 1/8 inch (3.2 mm) into the inside of the duct.~~

SECTION M1503.4 is hereby amended to read as follows:

M1503.4 Makeup air required. Exhaust hood systems capable of exhausting in excess of 400 cubic feet per minute (0.19 m³/s) shall be mechanically or naturally provided with makeup air at a rate approximately equal to the exhaust air

rate in excess of 400 cfm. Such makeup air systems shall be equipped with not less than one damper. Each damper shall be a gravity damper or an electrically operated damper that automatically opens when the exhaust system operates. Dampers shall be accessible for inspection, service, repair and replacement without removing permanent construction or any other ducts not connected to the damper being inspected, serviced, repaired or replaced

SECTION M1506.3 is hereby amended read as follows:

M1506.2 Exhaust openings. Air exhaust openings shall terminate not less than 3 feet (914 mm) from property lines; 3 feet (914 mm) from operable ~~and non-operable~~ openings into the building and 10 feet (3048 mm) from mechanical air intakes except where the opening is located 3 feet (914 mm) above the air intake. Openings shall comply with Sections R303.5.2 and R303.6.

SECTION M1601.4.1 is hereby amended to read as follows:

M1601.4.1 Joints, seams and connections. Longitudinal and transverse joints, seams and connections in metallic and nonmetallic ducts shall be constructed ...

Exceptions:

1. Spray polyurethane foam shall be permitted to be applied without additional joint seals.
2. Where a duct connection is made that is partially inaccessible, three screws or rivets shall be equally spaced on the exposed portion of the joint so as to prevent a hinge effect.
3. For ducts having a static pressure classification of less than 2 inches of water column (500 Pa), additional closure systems shall not be required for continuously welded joints and seams and locking-type joints and seams ~~of other than the snap lock and button lock types.~~

SECTION M1601.4.10 is hereby deleted in its entirety.

SECTION M1701.2 is hereby deleted in its entirety.

SECTION M1801.1 is hereby amended to read as follows:

M1801.1 Venting required. Fuel-burning *appliances* shall be vented to the outdoors in accordance with their *listing and label* and manufacturer's installation instructions ~~except appliances listed and labeled for unvented use~~. Venting systems shall consist of *approved* chimneys or vents, or venting assemblies that are integral parts of *labeled*

appliances. Gas fired appliances shall be vented in accordance with Chapter 24.

SECTION M2001.4 is hereby deleted in its entirety.

SECTION M2005.1 is hereby amended to read as follows:

M2005.1 General. Water heaters shall be installed in accordance with ~~Chapter 28~~ the North Dakota State Plumbing Code, the manufacturer's instructions and the requirements of this code. Water heaters installed in an attic shall comply with the requirements of Section M1305.1.3. Gas-fired water heaters shall comply with the requirements in Chapter 24. Domestic electric water heaters shall comply with UL 174. Oiled-fired water heaters shall comply with UL 732. Thermal solar water heaters shall comply with Chapter 23 and UL 174. Solid fuel-fired water heaters shall comply with UL 2523

SECTION M2101.3 is hereby amended to read as follows:

M2101.3 Protection of potable water. The potable water system shall be protected from backflow in accordance with the provisions listed in ~~Section P2902~~ the North Dakota State Plumbing Code.

SECTION M2101.10 is hereby amended to read as follows:

M2101.10 Tests. New ~~Hydronic~~ piping shall be isolated and tested hydrostatically at a pressure of ~~one and one-half times the maximum system design pressure, but not less~~ than 100 pounds per square inch (689 kPa). The duration of each test shall be not less than 15 minutes and not more than 20 minutes.

SECTION M2103.3 is hereby amended to read as follows:

M2103.3 Piping joints. Copper and copper alloy systems shall be soldered in accordance with ASTM B 828. Fluxes for soldering shall be in accordance with ASTM B 813. Brazing fluxes shall be in accordance with AWS A5.31. Piping joints that are embedded shall be installed in accordance with the following requirements:

1. Steel pipe joints shall be welded.
2. Copper tubing shall be joined by brazing complying with ~~Section P3003.6.1~~ the North Dakota State Plumbing Code.
3. Polybutylene pipe and tubing joints ...

SECTION M2201.6 is hereby deleted in its entirety.

SECTION G2404.7 (301.11) is hereby deleted in its entirety.

SECTION G2406.2 (303.3) is hereby amended to read as follows:

G2406.2 (303.3) Prohibited locations. *Appliances* shall not be located in sleeping rooms, bathrooms, toilet rooms, storage closets or surgical rooms, or in a space that opens only into such rooms or spaces, except where the installation complies with one of the following:

1. The *appliance* is a direct-vent appliance installed in accordance with the conditions of the listing and the manufacturer's instructions.

2. *Vented room heaters, wall furnaces, vented decorative appliances, vented gas fireplaces, vented gas fireplace heaters and decorative appliances* for installation in vented solid fuel-burning *fireplaces* are installed in rooms that meet the required volume criteria of Section G2407.5.

~~3. A single wall-mounted unvented room heater is installed in a bathroom and such unvented room heater is equipped as specified in Section G2445.6 and has an input rating not greater than 6,000 Btu/h (1.76 kW). The bathroom shall meet the required volume criteria of Section G2407.5.~~

~~4. A single wall-mounted unvented room heater is installed in a bedroom and such unvented room heater is equipped as specified in Section G2445.6 and has an input rating not greater than 10,000 Btu/h (2.93 kW). The bedroom shall meet the required volume criteria of Section G2407.5.~~

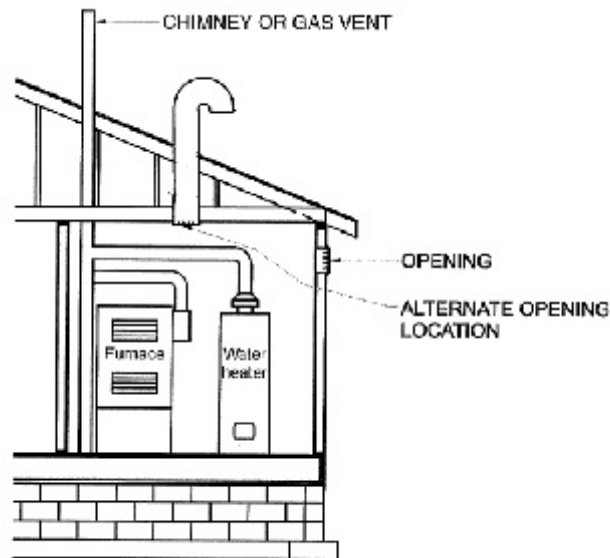
~~5~~3. The *appliance* is installed in a room or space that opens only into a bedroom or bathroom, and such room or space is used for no other purpose and is provided with a solid weather-stripped door equipped with an *approved* self-closing device. All *combustion air* shall be taken directly from the outdoors in accordance with Section G2407.6.

Figure G2407.6.1(1) [304.6.1(1)] is hereby deleted in its entirety.

Figure G2407.6.1(2) [304.6.1(2)] is hereby deleted in its entirety.

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Figure G2407.6.2 (304.6.2) is hereby amended to read as follows:



SECTION G2407.11 (304.11) is hereby amended to read as follows:

G2407.11 (304.11) Combustion air ducts. Combustion air ducts shall comply with all the following:

1. Ducts shall be constructed of galvanized steel complying with Chapter 16 or of a material having equivalent corrosion . . .
5. Ducts shall not ~~be screened where terminating~~ terminate in an attic space.
6. Horizontal upper *combustion air* ducts shall not slope downward . . .

SECTION G2413.5 (402.5) is hereby amended to read as follows:

Section G2413.5 (402.5) Allowable pressure drop. The design pressure loss in any *pipng system* under maximum probable flow conditions, from the *point of delivery* to the inlet connection of the *appliance*, shall be such that the supply pressure at the *appliance* is greater than or equal to the minimum pressure required by the *appliance* but such pressure loss shall not be greater than 0.5 inch water column for gas pipe systems operating at less than 2 psi.

SECTION G2417.4.1 (406.4.1) is hereby amended to read as follows:

Section G2417.4.1 (406.4.1) Test pressure. The test pressure to be used shall be not less than $1\frac{1}{2}$ times the proposed maximum working pressure, but not less than ~~25~~ 25 psig (~~20 kPa gauge~~), irrespective of design pressure. Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the *pipng* greater than 50 percent of the specified minimum yield strength of the pipe.

SECTION G2425.8 (501.8) is hereby amended to read as follows:

G2425.8 (501.8) Appliances not required to be vented. The following *appliances* shall not be required to be vented:

1. Ranges.
2. Built-in domestic cooking units *listed* and marked for optional venting.
3. Hot plates and laundry stoves.
4. *Type 1 clothes dryers* (*Type 1 clothes dryers* shall be exhausted in accordance with the requirements of Section G2439).
5. Refrigerators.
6. Counter *appliances*.
7. ~~Room heaters *listed* for unvented use.~~

Where the *appliances* listed in Items 5 ~~through 7~~ and 6 above are installed so that the aggregate input rating exceeds 20 Btu per hour per cubic foot (207 W/m^3) of volume of the room or space in which such *appliances* are installed, one or more shall be provided with venting *systems* or other *approved* means for conveying the vent gases to the outdoor atmosphere so that the aggregate input rating of the remaining *unvented appliances* does not exceed 20 Btu per hour cubic foot (207 W/m^3). Where the room or space in which the *appliance* is installed is directly connected to another room or space by a doorway, archway or other opening of comparable size that cannot be closed, the volume of such adjacent room or space shall be permitted to be included in the calculations.

SECTION G2425.12 (501.12) is hereby amended to read as follows:

G2425.12 (501.12) Residential and low-heat appliances flue lining systems. *Flue lining* systems for use with residential-type and low-heat *appliances* shall be limited to the following:

1. Clay *flue lining* complying with the requirements of ASTM C 315 or equivalent when each appliance

connected into the masonry chimney has a minimum input rating of greater than 400,000 Btu/h. Clay flue lining shall be installed in accordance with Chapter 10.

2. *Listed* chimney lining systems complying with UL 1777.
3. Other *approved* materials that will resist, without cracking, softening or corrosion, *flue gases and condensate* at temperatures up to 1,800°F (982°C).
 - a. Aluminum (1100 or 3003 alloy or equivalent) not less than 0.032 inches thick up to 8 inches in diameter.
 - b. Stainless steel (304 or 430 alloy or equivalent) not less than 26 gauge (0.018 inches thick) to 8 inches in diameter or not less than 24 gauge (0.024 inches thick) 8 inches in diameter and larger.

When a metal liner is used other than a listed chimney liner a condensation drip tee shall be installed and supported in an approved manner.

SECTION G2427.5.2 (503.5.3) is hereby amended to read as follows:

G2427.5.2 (503.5.3) Masonry chimneys. Masonry *chimneys* shall be built and installed in accordance with NFPA 211 and shall be lined ~~with approved clay flue lining, a listed chimney lining system, or other approved material that will resist corrosion, erosion, softening or cracking from vent gases at temperatures up to 1,800° F (982° C) as per G2425.12.~~

Exception: Masonry *chimney* flues serving *listed* gas . . .

SECTION G2439.7.2 (614.8.2) is hereby amended to read as follows:

G2439.7.2 (614.8.2) Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws ~~or similar fasteners that protrude more than 1/8 inch (3.2 mm) into the inside of the duct.~~

SECTION G2442.5 (618.5) is hereby amended to read as follows:

G2442.5 (618.5) Screen. Required outdoor air inlets shall be covered with a screen having ¼ inch (6.4 mm) openings.

Required outdoor air inlets serving a nonresidential portion of a building shall be covered with screen having openings larger than ¼ inch but not larger than ½ inch.

SECTION G2445 is hereby deleted in its entirety.

CHAPTERS 25 THROUGH 43 are hereby deleted in their entirety.

Source: Ord. 1011, Sec. 2 (2014); Ord. 1088, Sec. 2 (2017)

5-0703. PENALTY. A violation of the regulations contained in this chapter shall be deemed an offense and shall be punishable by a fine of not to exceed Five Hundred Dollars (\$500). Each day that a violation is permitted to exist shall constitute a separate offense. The provisions of Section 1-0211 shall also apply.

5-0704. FEE FOR COPY OF RELEVANT CODE PROVISIONS. Every licensed contractor, pursuant to Chapter 43-07 of the North Dakota Century Code, upon applying for a building permit, shall be provided a copy of the Building Code Ordinances of the City of West Fargo and the relevant portions of the International Residential Code adopted by the City which apply to residential construction. The contractor will be charged a fee for such copies in an amount set by the City Commission. A contractor will only be provided one copy of the International Residential Code sections and pay one fee for residential construction, no matter how many building permits are requested by that particular contractor. Provided, however, that if the City later adopts another Building Code, the contractor will again be required to pay another fee to get the revised Building Code provisions. Notwithstanding the above provisions, if a contractor shows the Building Official his/her copy of the appropriate Building Code, then the contractor shall just be supplied a copy of the West Fargo Building Code Ordinances and shall not be required to be provided nor pay the charge for obtaining a copy of the relevant Building Code.

5-0705. Appeals. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The West Fargo City Commission shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The West Fargo City Commission shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Commission may only reverse or modify a decision of the Code Official by a vote of at least three members of the Commission. If not all members of the Commission are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The commission shall have no authority to waive requirements of the Code.

CHAPTER 5-08

INTERNATIONAL EXISTING BUILDING CODE

Source: Ord. 820, Sec. 1 (2008); Ord. 880, Sec. 1 (2011)

SECTIONS:

- 5-0801. Adoption of International Existing Building Code.
- 5-0802. Amendment to International Existing Building Code.
- 5-0803. Penalty.
- 5-0804. Appeals.

5-0801. ADOPTION OF INTERNATIONAL EXISTING BUILDING CODE. There is hereby adopted by reference by the Board of City Commissioners, for the purpose of prescribing regulations governing standards, relative to housing in the City of West Fargo, that certain code known as the International Existing Building Code, recommended and compiled by the International Code Council, being particularly the 2015 edition thereof, as the same are now established in said code, a copy of which is on file in the office of the Building Administrator for the City of West Fargo, with the exception of the sections hereinafter set forth affecting local conditions of the City of West Fargo, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Existing Building Code; the Board of City Commissioners of said City of West Fargo, by this section hereby approves and adopts such rules and regulations, so modified, for the use and application within the city limits of West Fargo, North Dakota, as well as for any area within the extraterritorial zoning jurisdiction of the City. Provided, that any amendments of the 2015 edition of the Code may be adopted by the City by resolution.

Source: Ord. 1008, Sec. 1 (2014); Ord. 1082, Sec. 1 (2017)

5-0802. AMENDMENT TO INTERNATIONAL EXISTING BUILDING CODE. The International Existing Building Code, as adopted in Section 5-0801 is hereby changed and amended as follows:

SECTION 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Existing Building Code of ~~(NAME OF JURISDICTION)~~ the City of West Fargo hereinafter referred to as "this code."

SECTION 101.2 is hereby amended to read as follows:

101.2 Scope. The provisions of the *International Existing Building Code* shall apply to the *repair, alteration, change of occupancy, addition to and relocation of existing buildings.*

Exception: Existing buildings may use Chapter 34 of the 2012 International Building Code as an alternative to this code.

SECTION 104.2.1.1 is hereby amended to read as follows:

104.2.1.1 Building evaluation. The *code official* is authorized to require an *existing building* to be investigated and evaluated at the owner's expense by a registered design professional based on the circumstances agreed upon at the preliminary meeting. The design professional shall notify the *code official* if any potential nonconformance with the provisions of this code is identified.

SECTION 104.8 is hereby amended to add a new final paragraph to read as follows:

[A] 104.8 Liability. The *building official*, member of the board of appeals or employee charged with the enforcement of this code. While acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be ~~civilly or criminally~~ rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act or omission performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be afforded all the protection provided by the city's insurance pool and immunities and defenses provided by other applicable state and federal laws and shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The *building official* or any subordinate shall not be liable for the cost in any action, suit or proceeding that is instituted in pursuant of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

SECTION 104.8.1 is hereby deleted in its entirety.

SECTION 104.10.1 is hereby deleted in its entirety.

SECTION 105.2 is hereby amended to read as follows:

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. Sidewalks, retaining walls, and driveways not more than 30 inches (762 mm) above grade and not over any basement or story below and that are not part of an accessible route.
2. Painting, papering, tiling
6. Movable cases, counters and partitions not over 96 inches (1753 mm) in height.
7. Reroofing.

SECTION 106.3.1 is hereby amended to read as follows:

106.3.1. Approval of construction documents. When the *code official*... ..One set of construction documents so reviewed shall be retained by the *code official*. ~~The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or by a duly authorized representative.~~

SECTION 109.3.3 is hereby deleted in its entirety and subsequent sections renumbered accordingly.

SECTION 112 is hereby deleted in its entirety.

SECTION 201.3 is hereby amended to add the following:

201.3 Terms defined in other codes. Where terms are not defined in the other *International Codes*, such terms shall have the meanings ascribed to them in those codes.

Wherever the term "International Plumbing Code" and/or the "International Private Sewage Disposal Code" is used in this Code, it shall mean the North Dakota State Plumbing Code. Wherever the term "ICC Electrical Code" is used in this Code, it shall mean the National Electric Code together with the North Dakota State Wiring Standards. Wherever the term "Flood Hazard Area" is used, it shall mean the West Fargo Flood Plain Management ordinance

together with the Flood Proofing Code of the City of West Fargo, North Dakota.

SECTION 402.2 is hereby deleted in its entirety.

SECTION 403.2 is hereby deleted in its entirety.

SECTION 404.5 is hereby deleted in its entirety.

SECTION 408.2 is hereby deleted in its entirety.

SECTION 601.3 is hereby deleted in its entirety.

SECTION 606.2.4 is hereby deleted in its entirety.

SECTION 701.3 is hereby deleted in its entirety.

SECTION 1103.5 is hereby deleted in its entirety.

SECTION 1201.4 is hereby deleted in its entirety.

SECTION 1301.2 is hereby amended by adding a new second paragraph to read as follows:

1301.2 Conformance. ~~The building shall be safe for human occupancy as determined by the International Fire Code and the International Property Maintenance Code. Any repair, alteration, or change of occupancy undertaken within the moved structure shall comply with the requirements of this code applicable to the work being performed. Any field fabricated elements shall comply with the requirements of the International Building Code or the International Residential Code as applicable. Buildings to be moved within this jurisdiction shall comply with provisions of this Chapter. Buildings to be moved into this jurisdiction shall comply with the provisions of the International Codes for new buildings and shall be certified as to that compliance by an agency approved by the code official.~~

SECTION 1302.6 is hereby deleted in its entirety.

SECTION 1401.2 is hereby amended to read as follows:

1401.2 Applicability. Structures existing prior to ~~[DATE TO BE INSERTED BY THE JURISDICTION]~~ 1952 in which there is work involving *additions, alterations, or changes of occupancy* shall be made to conform to the requirements of this chapter or the provisions of Chapters 4 through 12. The provisions of Section 1301.2.1 through 1301.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F, M, R, and S.

These provisions shall not apply to buildings with occupancies in Group H or Group I-1, I-3 or I-4.

Source: Ord. 1008, Sec. 2 (2014); Ord. 1082, Sec, 2 (2017)

5-0803. Penalty. Any person violating any provision of the International Existing Building Code adopted by this title or any section of this title shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

5-0804. Appeals. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The West Fargo City Commission shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The West Fargo City Commission shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Commission may only reverse or modify a decision of the Code Official by a vote of at least three members of the Commission. If not all members of the Commission are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The commission shall have no authority to waive requirements of the Code.

CHAPTER 5-09

INTERNATIONAL ENERGY CONSERVATION CODE

Source: Ord. 881, Sec. 1 (2011)

SECTIONS:

- 5-0901. Adoption of International Energy Conservation Code.
- 5-0902. Amendment to International Energy Conservation Code.
- 5-0903. Penalty.
- 5-0904. Appeals.

5-0901. ADOPTION OF INTERNATIONAL ENERGY CONSERVATION CODE. There is hereby adopted by reference by the Board of City Commissioners, for the purpose of prescribing regulations governing standards, relative to housing in the City of West Fargo, that certain code known as the International Energy Conservation Code, recommended and compiled by the International Code Council, being particularly the 2015 edition thereof, as the same are now established in said code, a copy of which is on file in the office of the Building Administrator for the City of West Fargo, with the exception of the sections hereinafter set forth affecting local conditions of the City of West Fargo, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Energy Conservation Code; the Board of City Commissioners of said City of West Fargo, by this section hereby approves and adopts such rules and regulations, so modified, for the use and application within the city limits of West Fargo, North Dakota, as well as for any area within the extraterritorial zoning jurisdiction of the City. Provided, that any amendments of the 2015 edition of the Code may be adopted by the City by resolution.

Source: Ord. 1083, Sec. 1 (2017)

5-0902. AMENDMENT TO INTERNATIONAL ENERGY CONSERVATION CODE. The International Energy Conservation Code, as adopted in Section 5-0901 is hereby changed and amended as follows:

SECTION C101.1 is hereby amended to read as follows:

C101.1 Title. This code shall be known as the *International Energy Conservation Code* of ~~[NAME OF JURISDICTION]~~ City of West Fargo, and shall be cited as such. It is referred to herein as "this code."

SECTION C109 is hereby deleted in its entirety.

TABLE R402.1.2 is hereby amended to read as follows:

TABLE R402.1.2 INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT^s										
CLIMATE ZONE	FENESTRATION U-FACTOR ^a	SKYLIGHT ^b U-FACTOR ^b	GLAZED FENESTRATION SHGC ^{b, c}	CEILING R-VALUE	WOOD FRAMED WALL R-VALUE	MASS WALL R-VALUE ^d	FLOOR R-VALUE	BASEMENT ^e WALL R-VALUE	SLAB ^f R-VALUE AND DEPTH	CRAWL SPACE ^g WALL R-VALUE
1	NR	0.75	0.25	30	13	3/4	13	0	0	0
2	0.40	0.65	0.25	38	13	4/6	13	0	0	0
3	0.35	0.55	0.25	38	20 or 13 + 5 ^h	7/13	19	5/13 ^f	0	5/13
4 except Marine	0.35	0.55	0.40	49	20 or 13 + 5 ^h	8/13	19	10/13	10, 2 ft.	10/13
5 and Marine 4	0.32	0.55	NR	49	20 or 13 + 5 ^h	13/17	30 ^f	15/19	10, 2 ft.	15/19
6	0.32	0.55	NR	19	20 + 5 or 13 + 10^h 20 or 13 + 5 ^{h, i}	15/20	30 ^g	15/19 <u>10/13</u>	10, 4 ft.	15/19
7 and 8	0.32	0.55	NR	49	20 + 5 or 13 + 10^h 20 or 13 + 5 ^{h, i}	19/21	38 ^g	15/19 <u>10/13</u>	10, 4 ft.	15/19

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TABLE R402.1.4 is hereby amended to read as follows:

TABLE R402.1.4								
EQUIVALENT U-FACTORS ^a								
CLIMATE ZONE	FENESTRATION U-FACTOR ^b	SKYLIGHT ^b U-FACTOR ^b	CEILING U-FACTOR	WOOD FRAMED WALL U-FACTOR	MASS WALL U-FACTOR ^b	FLOOR U-FACTOR	BASEMENT WALL U-FACTOR	CRAWL SPACE WALL U-FACTOR
1	0.50	0.75	0.035	0.084	0.197	0.064	0.360	0.477
2	0.40	0.65	0.030	0.084	0.165	0.064	0.360	0.477
3	0.35	0.55	0.030	0.060	0.098	0.047	.091 ^c	0.136
4 except Marine	0.35	0.55	0.026	0.060	0.098	0.047	0.059	0.065
5 and Marine 4	0.32	0.55	0.026	0.060	0.082	0.033	0.050	0.055
6	0.32	0.55	0.026	0.045 <u>0.057</u>	0.060	0.033	0.05 <u>0.059</u>	0.055
7 and 8	0.32	0.55	0.026	0.045 <u>0.057</u>	0.057	0.028	0.05 <u>0.059</u>	0.055

SECTION R402.4 is hereby amended to read as follows:

R402.4 Air leakage (Mandatory). The *building thermal envelope* shall be constructed to limit air leakage in accordance with the requirements of Sections R402.4.1 through R402.4.4. Dwelling units of R-2 Occupancies and multiple single family dwellings shall be permitted to comply with IECC C402.5.

SECTION R402.4.1.2 is hereby amended to read as follows:

R402.4.1.2 Testing. The building or dwelling unit shall be tested and verified as having an air leakage rate of not exceeding five air changes per hour in Climate Zones 1 and 2, and ~~three air changes per hour in Climate Zones 3 through 8.~~ Testing shall be conducted in accordance with ASTM E 779 or ASTM E 1827 and ...

SECTION R402.4.1.3 is hereby added to read as follows:

R402.4.1.3 Visual inspection option. Building envelope tightness and insulation shall be considered acceptable when installed in accordance with Table R402.4.1.1 - "Air Barrier and Insulation" and has been field verified.

SECTION R403.3.2 is hereby amended to read as follows:

R403.3.2 Sealing (Mandatory). Ducts, air handlers and filter boxes shall be sealed. Joints and seams shall comply with either the *International Mechanical Code* or Section M1601.4.1 of this code, as applicable.

Exceptions:

1. Air-impermeable spray foam products shall be permitted to be applied without additional joint seals.
2. For ducts having a static pressure classification of less than 2 inches of water column (500 Pa), additional closure systems shall not be required for continuously welded joints and seams, and locking-type joints and seams ~~of other than the snap-lock and button-lock types.~~

SECTION R403.3.5 is hereby amended to read as follows:

R403.3.5 Building cavities (Mandatory). Building framing cavities shall not be used as supply ducts ~~or plenums.~~

SECTION R403.6 is hereby amended to read as follows:

~~R403.6 Mechanical V~~entilation (Mandatory). The building shall be provided with ventilation that meets the requirements of Section M1507 of this code or the *International Mechanical Code*, as applicable, or with other approved means of ventilation. Outdoor air intakes and exhausts shall have automatic or gravity dampers that close when the ventilation system is not operating.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

TABLE R405.5.2 (1) is hereby amended to read as follows:

TABLE R405.5.2(1)		
SPECIFICATIONS FOR THE STANDARD REFERENCE AND PROPOSED DESIGNS		
BUILDING COMPONENT	STANDARD REFERENCE DESIGN	PROPOSED DESIGN
...
Air exchange rate	<p>Air leakage rate of 5 air changes per hour in Climate Zones 1 and 2, and 3 air changes per hour in Climate Zones 3 through 8 at a pressure of 0.2 inches w.g changes per hour in Climate Zones 3 through 8 at a pressure of 0.2 inches w.g (50 Pa). The mechanical ventilation rate shall be in addition to the air leakage rate and the same as in the proposed design, but no greater than $0.01 \times \text{CFA} + 7.5 \times (\text{Nbr} + 1)$ where: CFA = conditioned floor area Nbr = number of bedrooms Energy recovery shall not be assumed for mechanical ventilation.</p>	<p>For residences that are not tested, the same air leakage rate as the standard reference design. For tested residences, the measured air exchange rate^a. The mechanical ventilation rate^b shall be in addition to the air leakage rate and shall be as proposed.</p>
...

Source: Ord. 1083, Sec. 2 (2017)

5-0903. Penalty. Any person violating any provision of the International Energy Conservation Code adopted by this title or any section of this title shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

5-0904. Appeals. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The West Fargo City Commission shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The West Fargo City Commission shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Commission may only reverse or modify a decision of the Code Official by a vote of at least three members of the Commission. If not all members of the Commission are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The commission shall have no authority to waive requirements of the Code.

CHAPTER 5-10

VACANT BUILDINGS

(Source: Ord. 1047, Sec. 1 [2015])

SECTIONS:

- 5-1001. Securing Vacant/Boarded Buildings.
- 5-1002. Vacant/Boarded Building Registration.
- 5-1003. Penalty.

5-1001. SECURING VACANT/BOARDED BUILDINGS.

1. Notice. In general, if any building is deemed hazardous due to the fact that the building is open to trespass and has not been secured and the building could be made safe by securing the building, the Building Administrator, as appointed pursuant to section 5-0414 of this title, may order the building secured and shall cause notice of the order to be served upon the owner of the premises. Such notice may be served personally or by mail. Service by mail is complete upon mailing a copy of the order to the owner at the last known address. If the owner fails to comply with the order within six (6) days after the order is served, the Building Administrator shall cause the building to be boarded up or otherwise properly secured.
2. Emergency. When it is determined by the City Administrator or his/her designee that an emergency exists with respect to the health or safety of persons in the community, and immediate boarding and securing of a building is required, and where danger will exist to children, transients or others in the absence of an immediate boarding or securing of the building, the designated city official may waive all requirements herein and immediately board or otherwise secure the building, provided that:
 - a. The conditions showing the existence of an exigency are documented in writing by the City Administrator or his/her designee; and
 - b. Notice is mailed immediately by the department invoking this section to the address of the owner and taxpayer, and, if recorded on the assessor's rolls, the address of the mortgage holder, of the date of boarding or otherwise securing and the reasons therefor.
3. Boarding Standards.
 - a. Boarding of a structure shall be required for all doors and windows that are not secured by normal

means; however, at least one door at grade level shall be maintained with locks or hinges to permit entry for inspection purposes under subsection e of this section.

- b. Boards shall be cut to fit door and window openings, and square head or star drive screws at least three inches (3") in length with washers shall be used to fasten boards to a structure.
- c. Boards shall be a minimum of five-eighths inch (5/8") thick and painted to match the trim or siding color of the structure.
- d. Screening or alternate methods of boarding may be permitted when approved by the City of West Fargo Building Administrator.
- e. The owner of a structure boarded under this section shall be required, upon notification, to provide entry to the structure to the City of West Fargo Building Administrator at least once every six (6) months for inspection purposes, or at any time when the structure has been unlawfully entered.
- f. The owner of a boarded structure shall notify the City of West Fargo Building Administrator in writing no later than ten (10) days after sale of the structure or the un-boarding of the property.

4. Maintenance of Secured Building.

- a. After a vacant or unoccupied building has been boarded or otherwise secured under this section, should the owner fail to maintain the building in a secured condition until such time as it has been repaired and reoccupied, the code official shall re-secure any openings into the building whenever it again becomes open to trespass, without further notice to the owner.
- b. The Owner shall be invoiced for an administrative fee as established by the city's fee schedule and all other costs incurred by the city for boarding or otherwise securing a building under this section, including, but not limited to, the actual costs for boarding, inspecting, posting and monitoring the building, if the owner fails to pay the invoice within thirty (30) days the invoice shall be charged as a special assessment against the real estate upon which the structure is located and shall be a lien upon such real estate.

- c. "Owner" shall mean, for the purposes of this section, the person who is listed as the contact person on the current rental licensing application on file with the city, if any; or, if none, the person listed as owner by the City Assessor on the homestead record; or, if none, the taxpayer as shown by the records of the City Assessor. "Owner" shall not include a local development organization as defined by North Dakota Century Code Chapter 40-57.1.

5-1002. VACANT/BOARDED BUILDING REGISTRATION.

- 1. Registration Criteria. The owner of a building shall register the building with the Building Administrator within five (5) days after it becomes a vacant or boarded building. In this section a "vacant or boarded building" is one that is:
 - a. Condemned;
 - b. Unoccupied and unsecured for five (5) days or more;
 - c. Secured by means other than those normally used in the design of the building for thirty (30) days or more;
 - d. Documented as having multiple building standards, fire or building code violations existing for thirty (30) days or more; or
 - e. Unoccupied for a period of time over three hundred sixty five (365) days and during which time an order has been issued to correct a nuisance condition pursuant to title 5, chapter 5-02 of this code.
- 2. Registration Forms; Required Information. The registration shall be submitted on forms provided by the Building Administrator and shall include the following information supplied by the owner:
 - a. A description of the premises;
 - b. The names and addresses of the owner or owners;
 - c. The names and addresses of all known lienholders and all other parties with an ownership interest in the building; and
 - d. The period of time the building is expected to remain vacant and a plan and timetable for returning the building to appropriate occupancy or for demolition of the building.

3. Compliance During Vacancy/Boarding Period. The owner shall comply with all applicable laws and codes. The owner shall notify the Building Administrator of any changes in information supplied as part of the building registration within thirty (30) days of the change. If the plan or timetable for the building repair or demolition is revised in any way, the revisions must meet the approval of the Building Administrator. The Building Administrator may require the water to be shut off in a vacant building in order to avoid the possibility of damages from broken water lines, freezing of water lines or vandalism.
4. Long Term Compliance. Boarding of vacant buildings is considered an interim measure. Property owners are expected to restore buildings to minimum property maintenance standards or conduct demolition of substandard structures within six (6) months in residential or mixed use zoning districts, or within twelve (12) months in commercial, industrial, or other zoning districts not specifically referenced herein. A property owner's documentation of substantial progress toward site restoration and specific obstacles impeding timely performance may warrant consideration by the Building Administrator of an extension to the compliance time line.
5. Maintenance of Building Until Action Taken. The owner and the subsequent owners shall keep the building secured and safe and the building and grounds properly maintained until the rehabilitation or demolition has been completed.
6. Failure to Maintain. Failure of the owner or any subsequent owner to maintain the building and premises that results in abatement completed by the city shall be grounds for revocation of the approved plan and shall be subject to any applicable penalties provided by law.
7. New Owner Registration. The new owner(s) shall register or reregister buildings subject to subsection 1 of this section with the Building Administrator within thirty (30) days of any transfer of an ownership interest in a vacant/boarded building. The new owner(s) shall comply with the approved plan and timetable submitted by the previous owner until any proposed changes are submitted and meet the approval of the director of inspections.
8. File of Written Statements. The Building Administrator shall include in the file any property specific written statements from community organizations, other interested parties or citizens regarding the history, problems, status or blighting influence of a vacant building.

9. Vacant/Boarded Building Fees.

- a. The owner of a vacant/boarded building shall pay an annual fee as established by the city's fee schedule. The fee is imposed to defray the administrative costs for registering and processing the building registration form and for the costs of the city in monitoring the building site.
- b. The first annual fee shall be paid no later than five (5) days after the building becomes vacant or boarded. Subsequent annual fees shall be due on the anniversary date of initial registration. The fees shall be paid in full prior to the issuance of any building permits, with the exception of a demolition permit.
- c. Unpaid fees shall be charged as a special assessment against the real estate upon which the structure is located and shall be a lien upon such real estate. Upon transfer of ownership, the new owner(s) shall be responsible for all unpaid and subsequent annual fees.

10. Owner To Provide Access. A building owner shall provide access to all interior portions of an unoccupied building in order to permit a complete inspection for the purpose of enforcing and assuring compliance with the provisions of this section.

5-1003. PENALTY. Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

TITLE VI.

FIRE PROTECTION AND PREVENTION

CHAPTERS:

- 6-01. International Fire Code.
- 6-02. Public Conduct in Case of Fire.

CHAPTER 6-01

INTERNATIONAL FIRE CODE

Source: Ord. 742, Sec 1 (2005); Ord. 882, Sec. 1 (2011)

SECTIONS:

- 6-0101. Adoption of International Fire Code.
- 6-0102. Definitions.
- 6-0103. Modifications of International Fire Code.
- 6-0104. Storage of Flammable Liquids.
- 6-0105. Storage of Explosives and Blasting Agents.
- 6-0106. Non-Conforming Uses.
- 6-0107. Modifications by Chief of Volunteer Fire Department.
- 6-0108. Appeals.
- 6-0109. Validity.
- 6-0110. Penalties.

6-0101. ADOPTION OF INTERNATIONAL FIRE CODE. There is hereby adopted by reference by the Board of City Commissioners, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, the provisions of the Code known as the International Fire Code, being particularly the 2015 edition thereof, as the same are now established in said Code, save and except such portions as are hereinafter deleted, modified, or amended by ordinance, or in accordance with other provisions of this title. A copy of said Code is on file in the office of the Chief of the volunteer fire department of the City of West Fargo, and the same is hereby adopted and incorporated as fully as if set out in length herein, and from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the City as well as for any area within the extraterritorial zoning jurisdiction of the City. Provided, that any amendments of the 2015 edition of the International Fire Code may be adopted by the City by resolution. The International Fire Code is also adopted as part of the International Building Code of the City of West Fargo.

Source: Ord. 1012, Sec. 1 (2014); Ord. 1084, Sec. 1 (2017)

6-0102. DEFINITIONS.

1. Whenever the word "municipality" is used in the International Fire Code, it shall mean the City of West Fargo.
2. Whenever the term "corporation counsel" is used in the International Fire Code, it shall mean the city attorney for the City of West Fargo.

3. Whenever the term "International Plumbing Code" is used in the International Fire Code, it shall mean the North Dakota state plumbing code.
4. Whenever the term "ICC Electrical Code" is used in the International Fire Code, it shall mean the National Electric Code together with the North Dakota State Wiring Standards.
5. Whenever the word "jurisdiction" is used in the International Fire Code, which code is hereinbefore more specifically identified in Section 6-0101, it shall be held to mean the corporate limits of the City of West Fargo, North Dakota, as well as any area within the extraterritorial zoning jurisdiction of the City.
6. Whenever the term "chief" is used in the International Fire Code, as hereinbefore more specifically identified in Section 6-0101, the same shall be construed to mean the chief of the volunteer fire department of the City of West Fargo, North Dakota.

6-0103. MODIFICATIONS OF INTERNATIONAL FIRE CODE. The International Fire Code is hereby changed and amended as follows:

SECTION 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the *Fire Code of ~~{NAME OF JURISDICTION}~~ the City of West Fargo*, hereinafter referred to as "this code."

SECTION 102.1 is hereby amended to read as follows:

102.1 Construction and design provisions. The construction and design provisions of this code shall apply to:

1. Structures, facilities and conditions arising after the adoption of this code.
2. Existing structures, facilities and conditions not legally in existence at the time of adoption of this code.
- ~~3. Existing structures, facilities and conditions when required in Chapter 46.~~
- ~~4~~3. Existing structures, facilities and conditions which, in the opinion of the *fire code official*, constitute a distinct hazard to life or property.

SECTION 102.6 is hereby amended to read as follows:

102.6 Historic buildings. The provisions of this code relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local jurisdiction as historic buildings where such buildings or structures do not constitute a distinct hazard to life or property. Fire protection in designated historic buildings shall be provided with an approved fire protection plan ~~as required in Section 1103.1.1.~~

SECTION 105.6 is hereby amended to delete Sections 105.6.1 through 105.6.31, Section 105.6.33, Sections 105.6.35 through 105.6.44 and Sections 105.6.46 through 105.6.48 and to read as follows:

105.6 Require operational permits. The fire code official is authorized to issue operational permits for the operations set forth in Section 105.6.1 through 105.6.3.

105.6.321 Open Burning. An operational permit is required for the kindling or maintaining of an open fire or a fire on any public street, alley, road or other public or private ground. Instructions and stipulations of the permit shall be adhered to.

Exception: Recreational fires

105.6.342 Open flames and candles. An operational permit is required to use open flames or candles in connection with assembly areas, dining areas of restaurants or drinking establishments. For purposes of this provision, churches shall not be deemed to be assembly areas and shall not be required to obtain a permit to utilize candles in religious ceremonies.

105.6.453 Temporary membrane structures and tents. An operational permit is required to operate an air-supported temporary membrane structure or tent having an area in excess of 400 square feet (37m²).

Exceptions:

1. Tents used exclusively for recreational camping purposes.
2. Funeral tents and curtains, or extensions attached thereto, when used for funeral services.
3. Tents and awnings open on all sides, which comply with all the following:

3.1. Individual tents having a maximum size of 700 square feet (65 m²).

3.2. The aggregate area of multiple tents placed side by side without a fire break clearance of 12 feet (3658 mm) shall not exceed 700 square feet (65 m²).

3.3. A minimum clearance of 12 feet (3658 mm) to structures and other tents shall be provided.

SECTION 105.7 is hereby amended to delete Sections 105.7.1 through 105.7.2, Sections 105.7.5 through 105.7.7, Sections 105.7.9 through 105.7.11 and Sections 105.7.13 through 105.7.18 and to read as follows:

105.7 Require construction permits. The fire code official is authorized to issue construction permits for the operations set forth in Section 105.7.1 through 105.6.464.

105.7.31 Compressed gases. When the compressed gases in use or storage exceed the amounts listed in Table 105.6.9 105.7.1, a construction permit is required to install, repair damage to, abandon, remove, place temporarily out of service, or substantially modify a compressed gas system.

Exception:

1. Routine maintenance.
2. For emergency repair work performed on an emergency basis, application for permit shall be made within two working days of the commencement of work.

Table 105.7.1
PERMIT AMOUNTS FOR COMPRESSED GASES

<u>TYPE OF GAS</u>	<u>AMOUNT</u>
	<u>(cubic feet at</u> <u>NTP)</u>
<u>Corrosive</u>	<u>200</u>
<u>Flammable (except</u> <u>cryogenic fluids and</u> <u>liquefied petroleum gases)</u>	<u>200</u>
<u>Highly toxic</u>	<u>Any Amount</u>
<u>Inert and simple</u> <u>asphyxiant</u>	<u>6,000</u>
<u>Oxidizing (including</u> <u>oxygen)</u>	<u>504</u>
<u>Pyrophoric</u>	<u>Any Amount</u>
<u>Toxic</u>	<u>Any Amount</u>

105.7.42 Cryogenic fluids. A construction permit is required for installation of or *alteration* to outdoor stationary *cryogenic fluid* storage systems where the system capacity exceeds the amounts listed in Table 105.6.11. Maintenance performed in accordance with this code is not considered to be an *alteration* and does not require a construction permit.

105.783 Flammable and combustible liquids. A construction permit is required:

1. To install, repair or modify a pipeline for the transportation of flammable or combustible liquids.
2. To install, construct or alter tank vehicles, equipment, tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used.
3. To install, alter, remove, abandon, or otherwise dispose of a flammable or combustible liquid tank.

105.7.124 LP-gas. A construction permit is required for installation of or modification to an LP-gas system with a single container in excess of 2000 gallons water capacity or the aggregate capacity of containers is more than 4000 gallons in water capacity.

SECTION 108 is hereby deleted in its entirety.

SECTION 109.4 is hereby amended to read as follows:

109.4 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the *approved construction documents* or directive of the *fire code official*, or of a permit or certificate used under provisions of this code, shall be ~~guilty of an [SPECIFY OFFENSE], punishable by a fine of not more than [AMOUNT] dollars, or by imprisonment not exceeding [NUMBER OF DAYS], or both such fine and imprisonment subject to penalties prescribed by law. Each day that a violation continues after due notice has been served shall be deemed a separate offense.~~

SECTION 111.4 is hereby amended to read as follows:

111.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to

remove a violation or unsafe condition, shall be liable to a fine of not ~~less than [AMOUNT] dollars or more than [AMOUNT]~~ five hundred dollars.

SECTION 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the *International Building Code, International Fuel Gas Code, International Mechanical Code* or *International Plumbing Code*, such terms shall have the meanings ascribed to them as in those codes.

Throughout this code, wherever reference is made to the International Plumbing Code it shall mean the North Dakota State Plumbing Code.

SECTION 202 is hereby amended to read as follows:

OCCUPANCY CLASSIFICATION. For the purposes of this code, certain occupancies are defined as follows: ...

Educational Group E. Educational Group E occupancy includes, among others, the use of a building or structure . . .

Group E, day care facilities. This group includes buildings or structures, or portions thereof occupied by more than ~~five~~ twelve children older than 2½ years of age who receive educational, supervision or personal care services for less than 24 hours per day.

Within places of worship. Rooms and spaces within places of worship providing such daycare during religious functions shall be classified as part of the primary occupancy.

Five Twelve or fewer children. A facility having ~~five~~ twelve or fewer children receiving such day care shall be classified as part of the primary occupancy.

Five Twelve or fewer children in a dwelling unit. A facility such as the above within a *dwelling unit* and having ~~five~~ twelve or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the *International Residential Code*.

Institutional Group I. Institutional Group I occupancy includes, among others, the use ...

Group I-4, day care facilities. This group shall include buildings and structures occupied . . .

Classification as Group E. A child day care facility that provides care for more than ~~five~~ twelve but no more than 100 children 21/2 years or less of age, where the rooms in which the children are cared for are located on a *level of exit discharge* serving such rooms and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.

SECTION 308.1.4 is hereby amended to read as follows:

308.1.4 Open-flame cooking devices. Charcoal burners and other open-flame cooking devices shall not be operated on combustible balconies or decks or within 10 feet (3048 mm) of combustible construction.

Exceptions:

1. One- and two-family *dwellings*.
2. Where buildings, balconies and decks are protected by an *automatic sprinkler system*.
3. LP-gas cooking devices having LP-gas containers with a water capacity not greater than ~~2½ pounds [nominal 1 pound (0.454 kg)]~~ 47.8 pounds [nominal 20 pounds (9 kg)] LP-gas capacity].

SECTION 308.3 is hereby amended to read as follows:

308.3 Group A occupancies. Open flame devices shall not be used in a Group A occupancy.

Exceptions

1. Open flame devices are allowed ...
 - 1.1 Where necessary for ceremonial ...
 - 1.4 Open flame devices for food warming.
2. Heat-producing equipment...

SECTION 315.3.1 is hereby amended to read as follows:

315.3.1 Ceiling clearance. Storage shall be maintained 2 feet (610 mm) or more below the ceiling in non-sprinklered areas of buildings or a minimum of 18 inches (457 mm) below sprinkler head deflectors in sprinklered areas of buildings.

Exception: This requirement does not apply to storage adjacent to and within 30 inches of the wall area.

SECTION 403.10.1.3 is hereby amended to read as follows:

403.10.1.3 Fire safety and evacuation instructions. Information shall be provided in the fire safety and evacuation plan when required by Section 404 to allow guests to decide whether to evacuate to the outside, evacuate to an area of refuge, remain in place, or any combination of the three.

SECTIONS 403.10.2.2, 403.10.2.2.1, 403.10.2.2.2, 403.10.2.2.3 and 403.10.2.3 are hereby deleted in their entirety.

SECTION 404.1 is hereby amended to read as follows:

404.1 General. Where required by Section 403, fire safety, evacuation and lockdown plans shall comply with Sections 404.2 through 404.4.1 when required by the code official.

SECTION 405.1 is hereby amended to read as follows:

405.1 General. Emergency evacuation drills ~~complying shall comply with Sections 405.2 through 405.9 shall be conducted not less than annually where fire safety and evacuation plans are required by Section 403 or where~~ required by the *fire code official*. Drills shall be designed in cooperation with the local authorities.

SECTION 510.1 is hereby amended to read as follows:

510.1 Emergency responder radio coverage in new buildings. When required by the fire code official, all new buildings, existing buildings to which additions or alterations are made, and buildings which occupancy is changed shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communications systems of the jurisdiction at the exterior of the building. This section shall . . .

SECTION 806.1.1 is hereby amended to read as follows:

806.1.1 Restricted occupancies. Natural cut trees shall be prohibited in Group A, E, I-1, I-2, I-3, I-4, M, R-1, R-2 and R-4 occupancies.

Exceptions:

1. Trees located in areas protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 shall not be prohibited in Groups A, E, M, R-1 and R-2.
2. Trees shall be allowed within dwelling units in Group R-2 occupancies.
3. For purposes of this provision, churches shall not be deemed public buildings and may utilize natural or resin bearing cut trees in the altar area of the church. No electric lighting is allowed on the tree.

SECTION 903.3.1 is hereby amended to read as follows:

903.3.1 Standards. Sprinkler systems shall be designed with a 5 psi safety margin and installed in accordance with Section 903.3.1.1, unless otherwise permitted by Sections 903.3.1.2 or 903.3.1.3 and other chapters of this code, as applicable.

SECTION 903.3.1.1 is hereby amended to read as follows:

903.3.1.1 NFPA 13 sprinkler systems. Where the provisions of this code require that a building or portion thereof be equipped throughout with an *automatic sprinkler system* in accordance with this section, sprinklers shall be installed throughout in accordance with NFPA 13 except as provided in Section 903.3.1.1.1 and 903.3.1.1.2.

Sprinkler heads in unoccupied mall tenant spaces may be installed at ceiling height if allowed by the code official. Permission will be granted on an individual basis. Combustible storage shall not be allowed in these unoccupied tenant spaces if sprinkler heads are installed at ceiling height. Signage shall be provided outlining the storage restrictions.

SECTION 905.1 is hereby amended to add the following:

905.1.1 Stand pipe hose. The installation of fire hose on standpipes may be omitted when approved by the fire code official. Approved standpipe hose valves and connections shall be provided where required.

SECTION 906.1 is hereby amended to add the following:

906.1 Where required. Portable fire extinguishers shall be installed in the following locations.

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.

Exception: in Group R-2 occupancies, portable fire extinguishers shall be required only in common areas and in locations specified in Items 2 through 6 ~~where each dwelling unit is provided with a portable fire extinguisher having a minimum rating of 1-A:10-B:C.~~

SECTION 907.8.3 is hereby deleted in its entirety.

SECTION 1011.5.2, Exception 3 is hereby amended to and Exception 6 is hereby added to read as follows:

1011.5.2 Riser height and tread depth. Stair riser heights shall ...

Exceptions:

1. *Spiral stairways . . .*
3. In Group R-3 occupancies; within dwelling units in Group R-2 occupancies; and in Group U occupancies that are accessory to a Group R-3 occupancy or accessory to individual dwelling units in Group R-2 occupancies; the maximum riser height shall be ~~7¾ inches (197 mm)~~ 8 inches; the minimum tread depth shall be ~~10 inches (254 mm)~~ 9 inches; ...
6. Stairways used only to attend equipment or private stairways serving an occupant load of 10 or fewer persons and which are not accessible to the public are permitted to have a maximum 8-inch riser height and minimum 9-inch tread depth.

CHAPTER 11 is hereby deleted in its entirety.

SECTION 2303.1 is hereby amended to read as follows:

2303.1 Location of dispensing devices. Dispensing devices shall . . .

1. Ten feet (3048 mm) or ...

6. On new installations, dispensing devices used to fill portable containers with home heating fuels shall not be located on the same island where Class I liquids are dispensed.

SECTION 5704.2.9.6.1 is hereby amended to read as follows:

5704.2.9.6.1 Locations where above-ground tanks are prohibited. Storage of Class I and II liquids in above-ground tanks outside of buildings shall be installed only in areas allowed per Section 6-0104 of the City of West Fargo Ordinances ~~is prohibited within the limits established by law as the limits of districts in which such storage is prohibited (see Section 3 of the Sample Legislation for Adoption of the International Fire Code on page xxi).~~

SECTION 5074.2.13.1.4 is hereby amended to read as follows:

5704.2.13.1.4 Tanks abandoned in place. Tanks abandoned in place shall be as follows:

1. Flammable and combustible liquids ...
7. Site assessment is required to determine if there are any spills, leaks, or discharge from the tank system. Records of site assessment shall be kept on the site of tank location.

SECTION 5705.3.7.5.1 is hereby to read as follows:

5705.3.7.5.1 Ventilation. Continuous mechanical ventilation shall . . .

Exception:

1. Where natural ventilation can be shown to be effective for the materials used, dispensed or mixed.
2. When approved by the chief, continuous ventilation may be provided for one complete air change per hour, if supplemented with mechanical ventilation designed to provide for a complete air change six times per hour. The non-continuous ventilation equipment and any lighting fixtures shall be operated by the same switch located outside of the door.

SECTION 5806.2 is hereby amended to read as follows:

5806.2 Limitations. Storage of flammable *cryogenic fluids* in stationary containers outside of buildings shall be installed only in areas allowed per Section 6-0104 of the City of West Fargo Ordinances ~~is prohibited within the limits established by law as the limits of districts in which such storage is prohibited (see Section 3 of the Sample Legislation for Adoption of the International Fire Code on page xxi).~~

SECTION 6103.2.1.6 is hereby amended to read as follows:

6103.2.1.6 Use with self-contained torch assemblies. Portable LP-gas containers are allowed to be used to supply approved self-contained torch assemblies or similar appliances. Such containers shall not exceed a water capacity of ~~2½ pounds (1 kg)~~ 12 pounds.

APPENDIX B "Fire-Flow Requirements for Buildings" is adopted and enacted in its entirety.

APPENDIX C "Fire Hydrant Locations and Distribution" is adopted and enacted in its entirety.

APPENDIX D "Fire Apparatus Access Roads" is adopted and enacted in its entirety.

Source: Ord. 1012, Sec. 2 (2014); Ord. 1084, Sec. 3 (2017)

6-0104. STORAGE OF FLAMMABLE LIQUIDS. The limits referred to in the International Fire Code, in which storage of flammable or combustible liquids in outside above-ground tanks is prohibited, are hereby established as follows: "The corporate limits of the City of West Fargo, North Dakota, except for property zoned LI-Light Industrial and M-Heavy Industrial as permitted, or property in the A-Agriculture, C-Light Commercial, HC-Heavy Commercial and LI-Light Industrial for which a conditional use permit has been granted.

The limits referred to in the International Fire Code, in which new bulk plants for flammable or combustible liquids are prohibited, are hereby established as follows: "The corporate limits of the City of West Fargo, North Dakota."

Source: Ord. 1084, Sec. 2 (2017)

6-0105. STORAGE OF EXPLOSIVES AND BLASTING AGENTS. The limits referred to in the International Fire Code, in which storage of explosives and blasting agents is prohibited, are hereby established as follows: "The corporate limits of the City of West Fargo, North Dakota."

6-0106. NON-CONFORMING USES. The regulations prescribed in Section 6-0104 shall not be construed to require the removal or any other change or alteration of outside above ground storage tanks in which flammable or combustible liquids are maintained not conforming to said prohibitions as of the effective date hereof, or otherwise interfere with the continuance of any such non-conforming use, nor shall they be construed to prohibit or otherwise preclude the construction of outside above ground tanks for the storage of flammable or combustible liquids on the following-described premises, to-wit:

Beginning at the Southwest corner of Section Four (4), Township One Hundred Thirty-nine (139) North of Range Forty-nine (49) West of the Fifth Principal Meridian, Cass County, North Dakota; thence North along the West boundary line of said Section Four (4), One Thousand One Hundred Eighty-four and Seventy One-hundredths feet (1,184.17), more or less, to the South right-of-way line of the Northern Pacific Railway Company, as it is presently constituted, thence Southeasterly along said right-of-way Two Thousand Six Hundred Eighty-two and Four-tenths feet (2,682.4), more or less, to the East boundary line of the Southwest Quarter (SW $\frac{1}{4}$) of said Section Four (4), thence South along the East boundary line of said Southwest Quarter (SW $\frac{1}{4}$) One Thousand and Eight-tenths feet (1,000.8), more or less, to the Southeast corner of said Southwest Quarter (SW $\frac{1}{4}$), thence West along the South section line of said Section Four (4) a distance of Two Thousand Six Hundred Seventy-six and One-tenth feet (2,676.1), more or less, to the point of beginning.

provided, however, that any application for a building permit for the construction of outside, above ground tanks for the storage of flammable or combustible liquids on the hereinbefore described premises shall provide for designated, unobstructed access ways and/or fire hydrants sufficient to provide adequate fire protection as determined by the building official. Nothing contained in Section 6-0104 shall require any change in the construction, alteration, or intended use of any such structure if the construction or alteration was begun prior to the effective date of this ordinance, and is diligently prosecuted and completed within one year thereof.

6-0107. MODIFICATIONS BY CHIEF OF VOLUNTEER FIRE DEPARTMENT. The chief of the volunteer fire department of the City of West Fargo, North Dakota, shall have the power to modify any of the provisions of this chapter upon application in writing by the owner or lessee, or his duly authorized agent, when there are particular difficulties in the way of carrying out the strict letter of the provisions of this chapter, provided that the spirit of this chapter shall be observed, public safety secured, and substantial justice done. The particulars of such modification when granted or allowed and the decision of the chief of the volunteer fire

department of the City of West Fargo, North Dakota, thereon shall be entered upon the records of the department and a signed copy shall be furnished the applicant.

6-0108. APPEALS. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The West Fargo City Commission shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The West Fargo City Commission shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Commission may only reverse or modify a decision of the Code Official by a vote of at least three members of the Commission. If not all members of the Commission are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The commission shall have no authority to waive requirements of the Code.

6-0109. VALIDITY. The City Commission of the City of West Fargo, North Dakota, hereby declares that should any section, paragraph, sentence, or word of this ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the City Commission of the City of West Fargo, North Dakota, that it would have passed all other portions of this ordinance independent of the elimination hear from of any such portion as may be declared invalid.

6-0110. PENALTY. Any person violating any provision of the fire code adopted by this title or any section of this title shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

CHAPTER 6-02

PUBLIC CONDUCT IN CASE OF FIRE

SECTIONS:

- 6-0201. Persons Allowed on Fire Fighting Vehicles.
- 6-0202. Persons Allowed to Proceed to Fire Hall.
- 6-0203. Persons Allowed to Assist in Fire Extinguishment.
- 6-0204. Fire Chief May Command Assistance.

6-0201. PERSONS ALLOWED ON FIRE FIGHTING VEHICLES. No person except members of the fire department or such persons as are authorized by the Fire Chief or Chief in charge shall ride on the fire truck or other vehicle containing fire apparatus.

6-0202. PERSONS ALLOWED TO PROCEED TO FIRE HALL. In cases when the fire siren on the fire hall has sounded, no persons except members of the fire department or such persons as are authorized by the Fire Chief or Chief in charge shall proceed to the fire hall.

6-0203. PERSONS ALLOWED TO ASSIST IN FIRE EXTINGUISHMENT. No persons except members of the fire department or such persons as are authorized by the Fire Chief or Chief in charge shall assist in the extinguishment of fires or preservation of property exposed to fire during the time the fire department is engaged in the extinguishment of a fire or preservation of property exposed to a fire, nor shall any person hinder or delay the fire department or any member thereof in performing his duty in the extinguishment of a fire or preservation of property exposed to a fire.

6-0204. FIRE CHIEF MAY COMMAND ASSISTANCE. The Fire Chief or Chief in charge shall have the power to command such assistance from persons in attendance at any fire in the extinguishment of fires and for the preservation of property exposed to fire as may, in his judgment, be required.

TITLE VII.

HEATING, AIR-CONDITIONING AND COMBUSTION UNITS

CHAPTERS:

- 7-01. International Mechanical Code.
- 7-02. International Fuel Gas Code.
- 7-03. RESERVED FOR FUTURE USE.
- 7-04. RESERVED FOR FUTURE USE.
- 7-05. RESERVED FOR FUTURE USE.
- 7-06. Board of Examiners.
- 7-07. Fees.
- 7-08. Penalty.

CHAPTER 7-01

INTERNATIONAL MECHANICAL CODE

Source: Ord. 740, Sec. 1 (2005); Ord. 883, Sec. 1 (2011)

SECTIONS:

- 7-0101. Definitions.
- 7-0102. Scope of Title.
- 7-0103. Minimum Requirements.
- 7-0104. Emergency Repairs.
- 7-0105. Certificate of Authority Required.
- 7-0106. Standards Adopted.
- 7-0107. Modifications of International Mechanical Code.
- 7-0108. Appeals.

7-0101. DEFINITIONS. The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

1. "Person" includes any individual, firm, partnership, joint adventure, association, corporation, estate, receiver, or any other group or combination acting as a unit, and the plural as well as the singular number; their agents, employees and representatives.
2. "Building Inspector" means the Building Inspector of the City of West Fargo and his authorized assistants.
3. "Heating and Air-Conditioning Plant" includes any heating or air-conditioning plant or system and the component parts thereof (except combustion units as defined in Paragraph 4 of this section) including but not limited to steam boilers, hot water boilers and warm air furnaces.
4. "Combustion Unit" includes any stoker, oil burner, oil burning equipment, gas burner, gas burning equipment, conversion burner, or incinerator and their component parts.
5. "Cooling System" is all of that equipment intended or installed for the purpose of cooling air by mechanical means and discharging such air through ducts into any room or space. This definition shall not include any evaporative cooler.

7-0102. SCOPE OF TITLE. This title shall govern the construction, installation, alteration, maintenance and repair of all heating and air-conditioning plants; chimney flues, combustion units, gas burners, gas burner equipment and appliances; and gasoline stoves installed in or for all buildings within the City

of West Fargo, North Dakota, as well as for any area within the extraterritorial zoning jurisdiction of the City, except that the owner-occupant of any single family dwelling may, with the assistance of members of his family and household, personally perform any work governed by this title, but before doing the same shall obtain a permit therefor from the Building Inspector and pass inspection as hereinafter provided.

7-0103. MINIMUM REQUIREMENTS. The provisions of this title shall be held to be minimum requirements adopted for the protection of the health, welfare and safety of the community.

7-0104. EMERGENCY REPAIRS. In case of emergency, repair work may be proceeded without first obtaining the permit hereinafter required. Application for such permit shall be made within 24 hours after repairs are commenced, Sundays and holidays excepted. This Section shall not be construed to limit the right of Xcel Energy and its authorized employees to render necessary services.

7-0105. CERTIFICATE OF AUTHORITY REQUIRED. Except as is otherwise provided in Section 7-0102 and Section 7-0104 of this title, no person shall engage in or carry on the construction, installation, alteration, maintenance and repair of heating and air-conditioning plants and combustion units and gas burners, gas burner equipment and appliances within the City of West Fargo, or advertise, hold-out or otherwise represent himself as being qualified to perform such work without first securing and continuing in force a "Certificate of Authority" as hereinafter prescribed in this title.

7-0106. STANDARDS ADOPTED. The following standards are hereby adopted for all heating, air conditioning and other gas, oil, or coal consuming appliances within the City limits of West Fargo, as well as for any area within the extraterritorial zoning jurisdiction of the City.

1. All heating, air conditioning, or other gas, oil, or coal consuming appliances for either domestic or commercial use installed in the City of West Fargo shall bear a seal of approval from the American Gas Association, American Standards Association, Underwriters Laboratories, or other nationally recognized testing laboratory.
2. The provisions of the International Mechanical Code, sponsored by the International Code Council, 2015 edition, is hereby adopted as the mechanical code. Any amendments to the 2015 edition of the International Mechanical Code may be adopted by the City by resolution.

Source: Ord. 1009, Sec. 1 (2014); Ord. 1086, Sec. 1 (2017)

7-0107. MODIFICATIONS OF INTERNATIONAL MECHANICAL CODE. The International Mechanical Code as adopted in Section 7-0106(2) is hereby changed and amended to read as follows:

SECTION 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the *Mechanical Code* of ~~[NAME OF JURISDICTION]~~ the City of West Fargo, hereinafter referred to as "this code."

SECTION 103.4 is hereby amended to read as follows:

103.4 Liability. The code official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered ~~civilly or criminally~~ liable personally, and is hereby relieved from personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

SECTION 103.4.1 is hereby deleted in its entirety.

SECTION 106.4.8 is hereby deleted in its entirety.

SECTION 106.5.2 is hereby amended as follows:

106.5.2 Fee schedule. The fees for mechanical work shall be as indicated in the ~~following~~ schedule as established by the West Fargo Board of City Commissioners.

SECTION 106.5.3 is hereby amended as follows:

106.5.3 Fee refunds. The code official ~~shall~~ is authorized to order the refunding of fees as follows:

1. The full amount of any fee paid hereunder which was erroneously paid or collected.
2. Not more than ~~{SPECIFY PERCENTAGE}~~ eighty [80] percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
3. Not more than ~~{SPECIFY PERCENTAGE}~~ eighty [80] percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

The code official shall not authorize the refunding of any fee paid, except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

SECTION 108.4 is hereby amended as follows:

[A] 108.4 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair mechanical work in violation of the *approved construction documents* or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be ~~guilty of a [SPECIFY OFFENSE], punishable by a fine of not more than [AMOUNT] dollars or by imprisonment not exceeding [NUMBER OF DAYS], or both such fine and imprisonment subject to penalties as prescribed by law. Each day that a violation continues after due notice has been served shall be deemed a separate offense.~~

SECTION 109 is hereby deleted in its entirety.

SECTION 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the *International Building Code, International Fire Code, International Fuel Gas Code, National Electrical Code and the North Dakota State Wiring Standards* or the ~~International North Dakota State Plumbing Code~~, such terms shall have meanings ascribed to them as in those codes.

SECTION 305.4 is hereby amended to read as follows:

305.4 Interval of support. Piping shall be supported at distances not exceeding the spacing specified in Table 305.4, or in accordance with MSS SP-69. In addition to the requirements of Table 305.4, piping and tubing shall

be supported within 2 feet (610 mm) of every bend or angle.

SECTION 307.2.2 is hereby amended to read as follows:

307.2.2 Drain pipe materials and sizes. Components of the condensate disposal system shall be cast iron, galvanized steel, copper, cross-linked polyethylene, polybutylene, polyethylene, ABS, CPVC or PVC pipe or tubing. All components shall be selected for the pressure and temperature rating of the installation. Joints and connections shall be made in accordance with the applicable provisions of ~~Chapter 7 of the International~~ *the North Dakota State Plumbing Code* relative to the material type. Condensate waste and drain line shall be not less than 3/4-inch (19 mm) internal diameter and shall not decrease in size from the drain pan connection to the place of condensate disposal. Where the drain pipes from more than one unit are manifolded together for condensate drainage, the pipe or tubing shall be sized in accordance with Table 307.2.2.

SECTION 401.2 is hereby amended as follows:

401.2 Ventilation required. Every occupied space shall be ventilated by natural means in accordance with Section 402 or by mechanical ventilation in accordance with Section 403. ~~Where the air infiltration rate in a dwelling unit is less than 5 air changes per hour when tested with a blower door at a pressure of 0.2 inch water column (50 Pa) in accordance with Section 402.4.1.2 of the International Energy Conservation Code, the dwelling unit shall be ventilated by mechanical means in accordance with Section 403.~~

SECTION 403.1 is hereby amended as follows:

403.1 Ventilation system. Mechanical ventilation shall be provided by a method of supply air and return or exhaust air ~~except that mechanical ventilation air requirements for Group R-2, R-3 and R-4 occupancies three stories and less in height above grade plane shall be provided by an exhaust system, supply system or combination thereof.~~ The amount of supply air shall be approximately equal to the amount of return and exhaust air. The system shall not be prohibited from producing negative or positive pressure. The system to convey ventilation air shall be designed and installed in accordance with Chapter 6.

SECTION 504.8.2 is hereby amended as follows:

504.8.2 Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined

~~with screws or similar fasteners that protrude more than 1/8 inch (3.2 mm) into the inside of the duct.~~

SECTION 505.2 is hereby amended as follows:

505.2 Makeup air required. Exhaust hood systems capable of exhausting in excess of 400 cfm (0.19 m³/s) shall be provided with *makeup air* at a rate in excess of 400 cfm approximately equal to the exhaust air rate. Such *makeup air* systems shall be equipped with a means of closure and shall be automatically controlled to start and operate simultaneously with the exhaust system.

SECTION 508.2 is hereby amended to read as follows:

Section 508.2. Compensating hoods. Manufacturers of compensating hoods shall provide a label indicating minimum exhaust flow and/or maximum makeup airflow that provides capture and containment of the exhaust effluent. Short circuit compensating hoods are prohibited.

SECTION 508.2.1 is hereby added to read as follows:

508.2.1 Compensating Hood Make-up Air. Compensating hoods shall extract at least 40% of the required exhaust air flow from the kitchen area.

SECTION 701.2 is hereby added to read as follows:

701.2 Attic space. Attic space shall not be used for combustion air.

SECTION 908.5 is hereby amended as follows:

908.5 Water supply. Cooling towers, evaporative coolers and fluid coolers shall be provided with an approved water supply, sized for peak demand. The quality of water shall be provided in accordance with the equipment manufacturer's recommendations. The piping system and protection of the potable water supply system shall be installed as required by the International North Dakota State Plumbing Code.

SECTION 1007.2 is hereby deleted in its entirety.

SECTION 1104.2 is hereby amended to add the following new third exception:

1104.2 Machinery room. ...

Exceptions: ...

3. If an existing refrigerating system is replaced or if an existing refrigeration plant is increased by not more than 50% of its

original capacity, but not more than 100 tons per system using a nonflammable class A1 or B1 refrigerant and the refrigeration machinery room was not provided in the original installation prior to 1994, a refrigeration machinery room shall not be required. If the existing refrigeration is not located in a general machinery room separated from occupied spaces, a refrigeration machinery room shall be provided. The space containing the refrigeration machinery shall meet the requirements of Section 1104.3.4, protection from refrigerant decomposition, and Section 1105.3, requiring refrigerant detection. If the requirements of 1104.3.4 and 1105.3 cannot be met, a refrigeration machinery room shall be provided.

Source: Ord. 1009, Sec. 2 (2014); Ord. 1086, Sec. 2 (2017)

7-0108. APPEALS. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The West Fargo City Commission shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The West Fargo City Commission shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Commission may only reverse or modify a decision of the Code Official by a vote of at least three members of the Commission. If not all members of the Commission are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The commission shall have no authority to waive requirements of the Code.

CHAPTER 7-02

INTERNATIONAL FUEL GAS CODE

Source: Ord. 741, Sec. 1 (2005); Ord. 884, Sec. 1 (2011)

SECTIONS:

- 7-0201. Adoption of International Fuel Gas Code.
- 7-0202. Amendment to International Fuel Gas Code.
- 7-0203. Appeals.

7-0201. ADOPTION OF INTERNATIONAL FUEL GAS CODE. There is hereby adopted by reference by the Board of City Commissioners, for the purpose of prescribing regulations governing standards, relative to housing in the City of West Fargo, that certain code known as the International Fuel Gas Code, recommended and compiled by the International Code Council, being particularly the 2015 edition thereof, as the same are now established in said code, a copy of which is on file in the office of the Building Administrator for the City of West Fargo, with the exception of the sections hereinafter set forth affecting local conditions of the City of West Fargo, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Fuel Gas Code; the Board of City Commissioners of said City of West Fargo, by this section hereby approves and adopts such rules and regulations, so modified, for the use and application within the city limits of West Fargo, North Dakota, as well as for any area within the extraterritorial zoning jurisdiction of the City. Provided, that any amendments of the 2015 edition of the Code may be adopted by the City by resolution.

Source: Ord. 1007, Sec. 1 (2014); Ord. 1085, Sec. 1 (2017)

7-0202. AMENDMENT TO INTERNATIONAL FUEL GAS CODE. The International Fuel Gas Code, as adopted in Section 7-0201 is hereby changed and amended as follows:

SECTION 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the *International Fuel Gas Code of ~~[NAME OF JURISDICTION]~~ the City of West Fargo*, hereinafter referred to as "this code."

SECTION 103.4 is hereby amended to read as follows:

103.4 Liability. The code official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered ~~civilly or~~

~~criminally~~ liable personally, and is hereby relieved from personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

SECTION 103.4.1 is hereby deleted in its entirety.

SECTION 106.5.8 is hereby deleted in its entirety.

SECTION 106.6.2 is hereby amended as follows:

106.6.2 Fee schedule. The fees for mechanical work shall be as indicated in the ~~following~~ schedule as established by the West Fargo Board of City Commissioners.

SECTION 106.6.3 is hereby amended as follows:

106.6.3 Fee refunds. The code official ~~shall~~ is authorized to order the refunding of fees as follows.

1. The full amount of any fee paid hereunder which was erroneously paid or collected.
2. Not more than ~~{SPECIFY PERCENTAGE}~~ eighty [80] percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
3. Not more than ~~{SPECIFY PERCENTAGE}~~ eighty [80] percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

The code official shall not authorize the refunding of any fee paid, except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

SECTION 108.4 is hereby amended as follows:

[A] 108.4 Violation penalties. Persons who shall violate a provision of this code, fail to comply with any of the requirements thereof or erect, install, alter or repair work in violation of the *approved construction documents* or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be ~~guilty of a [SPECIFY OFFENSE], punishable by a fine of not more than [AMOUNT] dollars or by imprisonment not exceeding [NUMBER OF DAYS], or both such fine and imprisonment~~ subjected to penalties as prescribed by law. ~~Each day that a violation continues after due notice has been served shall be deemed a separate offense.~~

SECTION 109 is hereby deleted in their entirety.

SECTION 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the *International Building Code, International Fire Code, International Fuel Gas Code, National Electrical Code and the North Dakota State Wiring Standards* or the ~~International~~ *North Dakota State Plumbing Code*, such terms shall have meanings ascribed to them as in those codes.

SECTION 303.3 is hereby amended to read as follows:

303.3 Prohibited locations. Appliances shall not be located in sleeping rooms, bathrooms, toilet rooms, storage closets or surgical rooms, or in a space that opens only into such rooms or spaces, except where the installation complies with one of the following:

1. The *appliance* is a direct-vent *appliance* installed in accordance with the conditions of the listing and the manufacturer's instructions.
2. Vented room heaters, wall furnaces, vented decorative appliances, vented gas fireplaces, vented gas fireplace heaters and decorative appliances for installation in vented solid fuel-burning fireplaces are installed in rooms that meet the required volume criteria of Section 304.5.

- ~~3. A single wall-mounted unvented room heater is installed in a bathroom and such unvented room heater is equipped as specified in Section 621.6 and has an input rating not greater than 6,000 Btu/h (1.76 kW). The bathroom shall meet the required volume criteria of Section 304.5.~~
- ~~4. A single wall-mounted unvented room heater is installed in a bedroom and such unvented room heater is equipped as specified in Section 621.6 and has an input rating not greater than 10,000 Btu/h (2.93 kW). The bedroom shall meet the required volume criteria of Section 304.5.~~
- 5.3. The *appliance* is installed in a room or space that opens only into a bedroom or bathroom, and such room or space is used for no other purpose and is provided with a solid weather-stripped door equipped with an *approved* self-closing device. All *combustion air* shall be taken directly from the outdoors in accordance with Section 304.6.

SECTION 304.6.1 is hereby amended to read as follows:

304.6.1 Two-permanent-openings method. Two permanent openings, one commencing within . . .

Where directly communicating with the outdoors, or where communicating with the outdoors through vertical ducts, each opening shall have a minimum free area of 1 square inch per 4,000 Btu/h (550 mm²/kW) of total input rating of all appliances in the enclosure. ~~[see Figures 304.6.1(1) and 304.6.1(2)]~~.

Where communicating . . .

FIGURE 304.6.1 (1) is hereby deleted in its entirety.

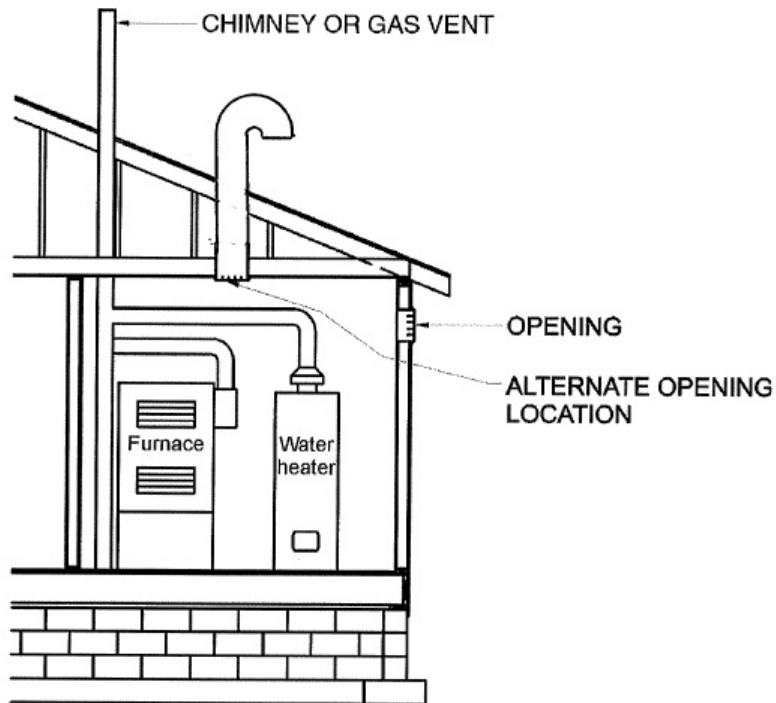
FIGURE 304.6.1 (2) is hereby deleted in its entirety.

SECTION 304.6.2 is hereby amended to read as follows:

304.6.2 One-permanent-opening method. One permanent opening, commencing within 12 inches (305 mm) of the top of the enclosure, shall be provided. The *appliance* shall have clearances of at least 1 inch (25 mm) from the sides and back and 6 inches (152 mm) from the front of the *appliance*. The opening shall directly communicate with the outdoors or through a vertical or horizontal duct to the outdoors, ~~or spaces that freely communicate with the outdoors~~ (see Figure 304.6.2) and shall have a minimum free area of 1 square inch per 3,000 Btu/h (734mm²/kW) of

the total input rating of all appliances located in the enclosure and not less than the sum of the areas of all vent connectors in the space.

FIGURE 304.6.2 is hereby amended to reference an alternate opening location as shown.



SECTION 304.11 hereby amended as follows:

304.11 Combustion air ducts. *Combustion air ducts shall . . .*

1. Ducts shall . . .
5. Ducts shall not be screened where terminating terminate in an attic space.
6. Horizontal upper . . .

SECTION 403.3 is hereby amended to read as follows:

403.3 Other materials. Material not covered by the standards specifications listed herein shall be investigated and tested to determine that it is safe and suitable for the proposed service, and, in addition, shall be recommended for that service by the manufacturer and shall be *approved* by the code official. Listed LPG hose may be used with natural gas when used for temporary heating at a maximum length of 50 feet.

SECTION 403.10.1.1 is hereby added to read as follows:

403.10.1.1 Gas Supply systems with pressures 5 psig or greater and gas pipe joints 2½ inches or larger, regardless of pressure, shall be welded.

SECTION 403.10.4 to hereby amended to read as follows:

403.10.4 Metallic fittings. Metallic fittings shall . . .

1. Threaded fittings in sizes ~~larger than 4 inches (102mm)~~ 2½ inches or larger shall not be used except where *approved*.
2. Fittings used . . .

SECTION 406.4 is hereby amended to read as follows:

406.4 Test pressure measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made. ~~Mechanical gauges used to measure test pressures shall have a range such that the highest end of the scale is not greater than five times the test pressure. Dial gauges used to measure test pressures shall be performed with gauges of 2 psi incrimination or less and have a range not exceeding 100 psi unless otherwise approved.~~

SECTION 406.4.1 is hereby amended to read as follows:

406.4.1 Test pressure. The test pressure to be used shall be no less than 1 1/2 times the proposed maximum working pressure, but not less than ~~3 psig (20 kPa gauge)~~ 25 psig, irrespective of design pressure. Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe.

SECTION 408.2 is hereby amended to read as follows:

408.2 Drips. Where wet gas exists, a drip shall be provided at any point in the line of pipe where condensate could collect. ~~A drip shall also be provided at the outlet of the meter and shall be installed so as to constitute a trap wherein an accumulation of condensate will shut off the flow of gas before the condensate will run back into the meter.~~

SECTION 411.2 is hereby amended to read as follows:

411.2 Manufactured home connections. Manufactured homes shall be connected to the distribution *piping* system by ~~one of the following materials:~~

- ~~1. Metallic pipe in accordance with Section 403.4.~~
- ~~2. Metallic tubing in accordance with Section 403.5.~~
- ~~3. Listed~~ and labeled connectors in compliance with ANSI Z21.75/CSA 6.27 and installed in accordance with the manufacturer's installation instructions.

SECTION 415.1 is hereby amended to add the following:

415.1 Interval of support. *Piping* shall be supported at intervals not exceeding the spacing specified in Table 415.1. Spacing of supports for CSST shall be in accordance with the CSST manufacturer's instructions. In addition to the requirements of Table 415.1, piping and tubing shall be supported within 2 feet of every bend or angle.

SECTION 501.8 is hereby amended by deleting item 8 and renumbering as follows:

501.8 Appliances not to be vented. The following appliances . . .

1. Ranges. . . .
- ~~8. Room heaters listed for unvented use.~~
- ~~9.~~ 8. Direct-fired makeup air heaters.
- ~~10.~~ 9. Other appliances *listed* for unvented use and not provided with flue collars.
- ~~11.~~ 10. Specialized equipment of limited input such as laboratory burners and gas lights.

SECTION 501.12 is hereby amended to read as follows:

501.12 Residential and low-heat appliances flue lining systems. Flue lining systems for use with residential-type and low-heat appliances shall be limited to the following:

1. Clay flue lining complying with the requirements of ASTM C 315 or equivalent when each appliance connected into the masonry

chimney has a minimum input rating greater than 400,000 Btu/h. Clay flue lining shall be installed in accordance with the *International Building Code*.

2. *Listed* chimney lining systems complying with UL1777.
3. Other *approved* materials that will resist, without cracking, softening or corrosion, flue gases and condensate at temperatures up to 1,800°F (982°C).
 - a. Aluminum (1100 or 3003 alloy or equivalent) not less than 0.032 inches thick to 8 inches diameter.
 - b. Stainless steel (304 or 430 alloy or equivalent) not less than 26 gauge (0.018 inches thick) to 8 inches diameter or not less than 24 gauge (0.024 inches thick) 8 inches diameter and larger.

When a metal liner is used other than a listed chimney liner a condensation drip tee shall be installed and supported in an approved manner.

SECTION 503.5.3 is hereby amended to read as follows:

503.5.3 Masonry chimneys. Masonry chimneys shall be built and installed in accordance with NFPA 211 and shall be lined ~~with approved clay flue lining, a listed chimney lining system or other approved material that will resist corrosion, erosion, softening or cracking from vent gases at temperatures up to 1,800°F (982°C).~~ as per sec. 501.12.

SECTION 503.5.6.1 is hereby amended to read as follows:

503.5.6.1 Chimney lining. Chimneys shall be lined in accordance with NFPA 211 and Section 501.12.

Exception: Where an existing chimney complies with Sections 503.5.6 through 503.5.6.3 and its sizing is in accordance with Section 503.5.5, its continued use shall be allowed ~~where the appliance vented by such chimney is replaced by an appliance of similar type, input rating and efficiency. when, in more than one appliance venting system the secondary appliance, such as a water heater, is replaced and the primary heating appliance remains.~~

SECTION 621 is hereby deleted in its entirety.

Source: Ord. 1007, Sec. 2 (2014); Ord. 1085, Sec. 2 (2017)

7-0203. APPEALS. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The West Fargo City Commission shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The West Fargo City Commission shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Commission may only reverse or modify a decision of the Code Official by a vote of at least three members of the Commission. If not all members of the Commission are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The commission shall have no authority to waive requirements of the Code.

CHAPTER 7-03

RESERVED FOR FUTURE USE

CHAPTER 7-04

RESERVED FOR FUTURE USE

CHAPTER 7-05

RESERVED FOR FUTURE USE

CHAPTER 7-06

BOARD OF EXAMINERS

SECTIONS:

- 7-0601. Definitions.
- 7-0602. Board of Examiners Created.
- 7-0603. Terms of Office.
- 7-0604. Applications.
- 7-0605. Duties - Subject of Examination.
- 7-0606. Rules and Procedures.
- 7-0607. Decisions.
- 7-0608. Time of Examination.
- 7-0609. Passing Grade.
- 7-0610. Certificate of Authority.
- 7-0611. Suspension or Revocation of Certificates.
- 7-0612. Records.
- 7-0613. Master Heating Contractor and Master Gas Installer -
Bond Required.
- 7-0614. Liability Insurance.
- 7-0615. Liability.

7-0601. DEFINITIONS. The following words, terms and phrases when used in this title shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

1. "Master Heating Contractor" shall mean a person, firm or corporation duly authorized by a Master's Certificate of Authority to conduct the business of constructing, installing, altering, maintaining and repairing heating and air-conditioning plants and combustion units and fuel consuming appliances within the City of West Fargo.
2. "Journeyman Heating Mechanic" shall mean a person duly authorized by a Journeyman's Certificate of Authority to construct, install, alter, maintain and repair heating and air-conditioning plants and combustion units and all fuel consuming appliances while under the supervision of or in the employment of a master heating contractor.
3. "Master Gas Installer" shall mean a person, firm or corporation duly authorized by a Masters Certificate of Authority to conduct the business of installing, maintaining and repairing gas consuming appliances within the City of West Fargo.
4. "Journeyman Gas Fitter" shall mean a person duly authorized by a Journeyman's Certificate of Authority to

install, maintain and repair gas consuming appliances while under the supervision of or in the employment of a Master Gas Installer.

7-0602. BOARD OF EXAMINERS CREATED. There is hereby created a Board of Examiners consisting of seven (7) members, namely: the Chief of the Fire Department, the Building Inspector and the Electrical Inspector of the City of West Fargo, and four (4) members to be appointed by the Board of City Commissioners from a list of names submitted by the heating and air-conditioning contractors of the City of West Fargo. All members of the Board of Examiners shall serve without compensation.

7-0603. TERMS OF OFFICE. Initially two (2) members of the Board of Examiners appointed by the Board of City Commissioners shall serve for a term of one (1) year and the other two (2) and all future appointments shall be made for a term of two (2) years.

7-0604. APPLICATIONS. Any applicant for a Certificate of Authority shall state in the application whether it is for a Master's or Journeyman's Certificate. The application shall show the full name, place of residence, proposed or actual place of business, name of employer, if any, previous experience and trade references.

7-0605. DUTIES - SUBJECT OF EXAMINATIONS. The Board of Examiners shall examine all applicants for a Master's and Journeyman's Certificate of Authority as to their ability and skill to construct, install, alter, maintain, service and repair heating and air-conditioning plants, gas burners, gas burner equipment and appliances and combustion units in the City of West Fargo. The Board shall have complete control over such examinations. The subject of such examination shall be confined to the provisions, requirements and application of this title and the regulatory standards therein adopted. The Board may waive this examination if the applicant shall have passed the Fargo or Moorhead examination and have a current Certificate of Authority from either party.

7-0606. RULES AND PROCEDURES. The Board of Examiners shall make such rules and regulations and prescribe such procedure as may be necessary to carry out its duties under this title.

7-0607. DECISIONS. All decisions of the Board of Examiners shall be concurred in by at least four (4) members of the Board. The Building Inspector shall act as Chairman of the Board.

7-0608. TIME OF EXAMINATION. Regular examinations of applicants shall be conducted in June and December of each year at such time and place as the Board of Examiners may designate. Special examinations where deemed necessary by the Board may be held at the other times.

7-0609. PASSING GRADE. A passing grade shall be seventy-five percent (75%) of a possible one hundred percent (100%). Any applicant who shall fail to receive a passing grade shall be eligible to take a subsequent examination.

7-0610. CERTIFICATE OF AUTHORITY. The Board of Examiners shall certify to the Board of City Commissioners the names of all successful applicants which shall constitute a recommendation that the Board of City Commissioners issue to the applicant a Master's Certificate of Authority or a Journeyman's Certificate of Authority as the case may be upon payment of the fee required by this title. Such Certificate of Authority shall not authorize the doing of any work which is subject to the provisions of the Electrical Code and Plumbing Code of the City of West Fargo.

7-0611. SUSPENSION OR REVOCATION OF CERTIFICATES. The Board of Examiners shall have the authority to suspend or revoke any Certificate of Authority granted under the provisions of this title for violations thereof after first giving notice to the holder thereof of such claimed violation and an opportunity to be heard and present evidence in his own behalf.

7-0612. RECORDS. The Board of Examiners shall appoint a Secretary who shall keep accurate records of all its proceedings, all applications for examinations, the examinations given and the results thereof. Such reports shall be kept in the office of the Building Inspector and shall be open to public inspection during the business hours.

7-0613. MASTER HEATING CONTRACTOR AND MASTER GAS INSTALLER - BOND REQUIRED. Any Master Heating Contractor or Master Gas Installer to whom a Certificate of Authority has been granted shall before receiving such certificate, execute and deposit with the City Auditor, an annual surety bond to be approved by the Board of City Commissioners, in the sum of Five Thousand Dollars (\$5,000) conditioned that he will indemnify and keep harmless the City of West Fargo of and from all accidents and damages caused or claimed to be caused by any negligence on the part of himself or any person in his employ in protecting such work, or by any unfaithful or inadequate work done by virtue of this Certificate of Authority and that he will in all things strictly comply with the provisions of this title and with the conditions of any permit issued to him thereunder, which bond shall continue in force and effect for one (1) year after such work has been completed.

7-0614. LIABILITY INSURANCE. Public liability insurance shall be carried by each Master Heating Contractor and Master Gas Installer in an amount not less than One Hundred Thousand Dollars (\$100,000) for injuries including accidental death of one (1) person and subject to the same limit for each person in an amount of not less than Three Hundred Thousand Dollars (\$300,000) on account of one (1) accident and property damage insurance in the amount of not less than One Hundred Thousand Dollars (\$100,000).

A copy of such insurance policy shall be filed with the City Auditor and shall cover the full term of each license.

7-0615. LIABILITY. This title shall not be construed to relieve or lessen the responsibility or liability of any party or his employees engaged in the business of constructing, installing, altering, maintaining and repairing heating and air-conditioning plants, gas burners, gas burning equipment and combustion units within the City of West Fargo for damage to any person or property caused by any act of neglect or inadequate or defective work nor shall the City of West Fargo be held to have assumed any such liability by reason of the issuance of any Certificates of Authority. Certificates of Approval, Inspections of Installations, permits or other acts of said City of West Fargo or its employees as authorized or provided for by this title.

CHAPTER 7-07

FEEES

SECTIONS:

- 7-0701 Permit Fees.
 - 7-0702 License and Examination Fees.
 - 7-0703 Fee for Copy of Relevant Code Provisions.
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7-0701. PERMIT FEES. The fee for each permit shall be based on the permit fee schedule as adopted by resolution of the Board of City Commissioners of the City of West Fargo.

Source: Ord. 399, Sec. 5 (1990); Ord. 497, Sec. 9 (1996);
Ord. 555, Sec. 4 (1998).

7-0702. LICENSE AND EXAMINATION FEES. Master Heating Contractors, Master Gas Installer, Journeyman Heating Mechanic, Journeyman Gas Installer shall pay fees and license fees as follows:

Master Heating Contractor and Master Gas Installer:

Examination Fee	\$10.00
Annual License Fee, Certificate of Auth.	\$50.00
Renewal License Fee, Certificate of Auth.	\$25.00

Journeyman Heating Mechanic and Journeyman Gas Installer:

Examination Fee	\$ 5.00
Annual License Fee, Certificate of Auth.	\$ 4.00
Renewal License Fee, Certificate of Auth.	\$ 2.00

Unless the examination is waived pursuant to the provisions of Section 7-0605, then in that case the examination fee shall be waived. All licenses currently in effect at the time this ordinance is amended shall remain in effect until March 31, 2014. Thereafter, the license period shall be from April 1 through March 31 of the following year.

Source: Ord. 959, Sec. 2 (2013)

7-0703. FEE FOR COPY OF RELEVANT CODE PROVISIONS. Every licensed contractor, pursuant to Chapter 43-07 of the North Dakota Century Code, when applying for a heating permit or when applying for a license from the City, shall be provided a copy of the Mechanical Code Ordinances of the City of West Fargo and the relevant portions of the Uniform Mechanical Code adopted by the City. The contractor will be charged a fee for such copies in an amount set by the City Commission. A contractor will only be provided one copy of the relevant Mechanical Code sections and pay

one fee, no matter how many heating permits are requested by that particular contractor. Provided, however, that if the City later adopts another Mechanical Code, the contractor will again be required to pay another fee to get the revised Mechanical Code provisions. Notwithstanding the above provisions, if a contractor shows the licensing authority his/her copy of the appropriate Mechanical Code, then the contractor shall just be supplied a copy of the West Fargo Mechanical Code Ordinances and shall not be required to be provided nor pay the charge for obtaining a copy of the relevant Mechanical Code.

Source: Ord. 497, Sec. 10 (1996); Ord. 519, Sec. 2 (1997).

CHAPTER 7-08

PENALTY

SECTIONS:

7-0801. Penalty.

7-0801. PENALTY. Any person violating any of the provisions of this title, or failing to comply therewith, or who violates or fails to comply with any code, standard or requirement therein adopted by reference, or who constructs or installs any heating or air conditioning plant, gas burning equipment or appliance or combustion unit in violation of any plans, specifications or sketches upon which the same was submitted and approved or any permit issued thereunder shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. The imposition of one penalty for any violation or non compliance of this title shall not excuse or permit the same to continue; and all such persons shall be required to correct or remedy such violations or non-compliances within a reasonable time; and when not otherwise specified, each ten (10) days that prohibited conditions are maintained shall constitute a separate offense. The application of the above penalty shall not be held to prevent the enforced correction or removal of prohibited conditions.

TITLE VIII.

PLUMBING CODE

CHAPTERS:

8-01. General Provisions.

CHAPTER 8-01

GENERAL PROVISIONS

SECTIONS:

- 8-0101. Adoption of North Dakota State Plumbing Code.
- 8-0102. Amendment of State Plumbing Code.
- 8-0103. State to Administer and Enforce Code.
- 8-0104. Right of Entry.
- 8-0105. Protection of Water Supply System.
- 8-0106. Penalty.

8-0101. NORTH DAKOTA STATE PLUMBING CODE ADOPTED. The North Dakota State Plumbing Code is hereby adopted and all installations, repairs and alterations of plumbing shall, from the effective date of this ordinance, be performed in accordance with its provisions. The installation in buildings of the pipes, fixtures, and other facilitating apparatus for bringing water into, and using the same in buildings, and for removing liquids and water-carried wastes therefrom and including the practice, materials, and fixtures used in the installation, maintenance, extension, and alteration of all piping, fixtures, appliances and appurtenances in connection with any of the following: sanitary drainage or storm drainage facilities, the venting system, and the public or private water-supply systems, within or adjacent to any building or other structure, or conveyance, also the practice and materials used in the installation, maintenance, extension, or alteration of the storm water or sewage system of any premises to their connection with any point of public disposal or other terminal in the City of West Fargo, North Dakota, shall meet the provisions of the North Dakota State Plumbing Code as the same are now established in said Code, copies of which said Code are on file with the City Auditor and are hereby a part of the chapter by reference, with the exception of the sections hereinafter set forth affecting local conditions in the City, which sections shall be substituted for and in lieu of any like sections or paragraphs in the North Dakota State Plumbing Code; and the Board of City Commissioners, by this section, hereby approves and adopts such rules and regulations, as so modified, for use and application in the City of West Fargo, including any area within the extraterritorial zoning jurisdiction of the City.

8-0102. AMENDMENT OF STATE PLUMBING CODE.

- A. No services shall be constructed from a main for any purpose having a greater capacity than fifty percent of the main, and in no case shall a service be larger than eight inches in diameter.

- B. Services one and one-half inches in diameter or less shall be of copper pipe, which shall conform to the latest revision ASTM Specification B88-33 for underground services known as Type "L" soft tubing, or greater. Taps on water mains may be made up to two inches in diameter except on mains of six inches diameter or less when taps larger than one inch will not be permitted.
- C. Services one and one-half inches in diameter or less which are located in the same trench as the sewer service main, shall conform to the latest revision ASTM Specification B88-33 for underground services known as Type "K" soft tubing, or greater, and said water service pipe must be placed at an elevation at least twelve inches above the sewer service.
- D. If the water service is placed in the same trench as the sewer service, the sewer service shall be subject to the following requirements:
 - (i) Shall not leak when subjected to a ten-foot head of water, or equivalent.
 - (ii) Joints must be water-tight and root-proof.
 - (iii) A sewer pipe must be dwv schedule 40 plastic or heavier.
 - (iv) The sewer service must be installed at least twelve inches lower than the water service.
- E. Services over one and one-half inches in diameter shall be either copper or PVC 900 pipe connected to the main by a Zapping sleeve and valve or tee. Gate valves below four inches shall not be used. Any service less than four inches in size shall have a four-inch gate valve with proper reducers.
- F. No new service shall be constructed and no existing service shall be changed in such manner that more than one building shall be on same service.
- G. Copper services shall have at least two feet of extra length between the main and the curb cock.
- H. 1. All new businesses that have deep fryers or grills, prepare or cook meat, or require a grease extracting hood that exceed 100 mg. per liter FOG regulation, must install a grease trap or interceptor. All grease traps and interceptors must be designed using standard engineering principles for sedimentation and floatation

in gravity separators. Sufficient grease and storage capacity is required, with the minimum capacity of 50 GPM flow rate. Other treatment works or devices designed to remove greases from the wastewater may be used but must be approved in writing by the Public Works Director. All businesses maintaining grease trap interceptors must maintain the grease traps and interceptors so that they perform in the manner in which they are designed. Each business must maintain a log setting forth the maintenance on the grease traps or interceptors, which logs shall be available for inspection by an employee of the City of West Fargo within the normal business hours of the business.

2. Businesses that exist as of the date of this ordinance that have deep fryers or grills, prepare or cook meat, or require a grease extracting hood that exceeds 100 mg. per liter FOG regulation, are grandfathered and are not required to install a grease trap or interceptor as set forth above, except the business must do so if any of the following conditions apply:

- (i) The business's discharge exceeds the allowable levels of oils and grease as set forth in Section 9-0321(a) of the West Fargo ordinances.
- (ii) The business undertakes a major renovation of the cooking area in the business.
- (iii) The business makes major upgrades to kitchen equipment in the business.

Any existing business which is required to install grease traps and interceptors as a result of this section shall be ordered to install one within a reasonable period of time as set in a written notice from the Public Works Director.

- I. It shall be illegal to make a connection from the sump pump pit, the sump pump, or the sump pump discharge line which allows such ground or surface water to be discharged into the sanitary sewer system of the City of West Fargo without first having obtained a seasonal waiver from the City of West Fargo pursuant to Section 9-0328.

Source: Ord. 547, Sec. 1 (1998)

8-0103. STATE TO ADMINISTER AND ENFORCE CODE. The administration and enforcement of this chapter shall be by the State of North Dakota, who shall be referred to in this chapter as the "administrative authority" and who is hereby authorized to enforce the provisions of this chapter and to make the inspections and tests required thereunder. The State may appoint a person or persons to act on its behalf as such administrative authority. The State shall be responsible for the setting and collection of fees, the granting of permits and the inspections required by the North Dakota State Plumbing Code.

Source: Ord. 558, Sec. 2 (1999)

8-0104. RIGHT OF ENTRY. The administrative authority shall have the right to enter any premises at reasonable times for the purpose of inspecting any plumbing system.

8-0105. PROTECTION OF WATER SUPPLY SYSTEM. The administrative authority shall make such rules and regulations in furtherance of the purposes of this title and not inconsistent with the specific provisions of this title for the installation, repair or alteration of air-conditioning systems, water-treatment equipment, and water-operated devices as may be deemed necessary to properly protect the water supply system.

8-0106. PENALTY. Any person violating any provision of the plumbing code adopted by this title or any section of this title shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

8-0107. LICENSE REQUIRED. No individual or company shall engage in the business of plumbing in the City of West Fargo unless at all times a registered and license master plumber, who is responsible for the proper installation thereof, is in charge of such work. No person shall engage in the business of plumbing as a master plumber or journeyman plumber without being licensed and registered as a master plumber or journeyman plumber by the State of North Dakota. No local license will be required.

Source: Ord. 558, Sec. 3 (1999).

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TITLE IX.

WATER AND SEWER SERVICES

CHAPTERS:

- 9-01. Municipal Utility Operation.
- 9-02. Water Service.
- 9-03. Sewer Service.
- 9-04. Storm Water Management.

CHAPTER 9-01

MUNICIPAL UTILITY OPERATION

SECTIONS:

- 9-0101. Acquisition of Utility.
- 9-0102. Self-Supporting Nature.
- 9-0103. Municipal Utilities Fund.
- 9-0104. Use of Municipal Utilities Fund.
- 9-0105. *Repealed by Ord. 1062*
- 9-0106. City Covenants - Suit by Bondholders.
- 9-0107. Water and Sewage Service Charges: Billing by City Auditor.
- 9-0108. When Bill Due: Failure to Pay.
- 9-0109. Liability of Owners and Occupants for Services.
- 9-0110. Validity.

9-0101. ACQUISITION OF UTILITY. The City of West Fargo has heretofore acquired, and now owns and operates a complete water supply and distribution system and system for collection and treatment of sewage. The operation of those systems as a combined municipal utility is hereby confirmed and the systems shall henceforth be operated and maintained as a combined municipal water and sewer utility, hereinafter referred to as "the utility," pursuant to the provisions of Section 40-22-16, and Chapters 40-33 and 40-35, North Dakota Century Code. The utility shall include all plants, systems, works, equipment, materials, supplies, land, easements, interest or rights in land, mains, connections, water rights, contract rights, franchises, approaches, dams, reservoirs, filtration or treatment works, pumping stations, lift stations, and all other appurtenances, contrivances or structures used or useful in connection with obtaining a water supply, conservation, treatment and distribution of water for public and private uses, and collection, treatment and disposal of sewage as now owned or hereafter owned, improved or extended.

9-0102. SELF-SUPPORTING NATURE. The utility shall at all times be so operated and maintained, and rates and charges for its services, facilities, products and by-products shall be such as to make the utility self-supporting and self-perpetuating. Such charges from time to time imposed and collected shall be made and kept adequate to pay promptly as incurred all costs of the operation and maintenance of the utility and to establish and maintain reasonable operating reserves; to produce net revenues which shall be sufficient at all times to pay promptly all principal and interest due on all obligations incurred by the City for the improvement, extension and enlargement of the utility to the extent that such obligations are, according to their terms, payable from such net revenues, and to establish and maintain

adequate reserves for the security of such obligations in accordance with the ordinances or resolutions authorizing the issuance thereof; and to produce additional or surplus net revenue, over and above current principal, interest and reserve requirements, in amounts sufficient to provide a reasonable allowance for depreciation and replacement of the utility plus a reasonable return on the capital investment of the City in the facility, which surplus net revenues, when actually on hand, and to the extent not required for operation, maintenance, debt service and reserves for such purposes and for depreciation and replacement, may from time to time be appropriated by the Board to pay or contribute to the cost of any other City functions, subject to the limitations now or hereafter prescribed by law, including Sections 40-33-11 and 40-33-12, NDCC, as amended. This appropriation of revenues derived from operation of the utility shall not, however, be deemed or construed to preclude the City from defraying any part of all of the cost of any improvement, enlargement or extension of the utility by the levy of special assessments or ad valorem taxes or by the issuance of improvement warrants, refunding improvement warrants or bonds, or general obligation bonds of the City, whenever and to the extent that such action is deemed fair and equitable by the Board of City Commissioners and is authorized in the manner provided by law.

9-0103. MUNICIPAL UTILITIES FUND. All moneys received by the City with respect to the services, facilities, products and by-products furnished and made available by the utility, as it now exists and may hereafter be enlarged, improved or extended (except collections of special assessments and taxes appropriated to improvement district funds and moneys borrowed for capital improvements) and all moneys, receipts and returns received from any investments of such earnings, shall be paid into the treasury of the City and kept in a fund entitled Municipal Utilities Fund which shall be permanently maintained on the books of the City, in accordance with Section 40-33-10 NDCC. All receipts and disbursements of money on account of or in connection with the utility shall be entered and reflected in the records of said Fund, and the moneys from time to time on hand therein shall always constitute public municipal funds and shall be deposited, and their safekeeping secured, in the same manner as other funds of the City.

9-0104. USE OF MUNICIPAL UTILITIES FUND. The City can use and disburse funds from the Municipal Utilities Fund only for the purposes, and in the manner set out in Chapter 40-33-11 NDCC and 40-33-12 NDCC in effect at the date of this ordinance, and as they may be amended in the future. From the Municipal Utilities Fund there shall be transferred, to all special funds or accounts which are maintained for security of obligations payable in whole or in part from net revenues of the utility such amounts as are required by the provisions of the ordinances or resolutions authorizing the issuance of such obligations, at the times and in the manner prescribed by such ordinances and resolutions. If at any time the

balance on hand in the Municipal Utilities Fund is not sufficient to permit the transfer to all such special funds or accounts the full amounts then required by the terms of the authorizing ordinances and resolutions, such balance shall be distributed as follows: There shall first be transferred to each fund or account maintained for the payment of obligations constituting a first lien and charge upon said net revenues an amount sufficient, with other moneys then on hand in such funds or accounts, to pay all interest then due or past due on such obligations; and if said balance shall be insufficient for the payment of all such interest on such first lien obligations in full, it shall be distributed to such funds and accounts for first lien obligations in proportion to the amount of such interest payable therefrom, respectively. Any balance remaining in the Municipal Utilities Fund after providing for payment of all such interest shall be distributed among such first lien obligation funds or accounts. in sequence as required, with any other money then held therein, to pay the principal amount of such obligations then due or past due in order of their maturity dates, the earliest maturing obligations to be paid first, and in the case of obligations payable on the same date, the balance available for their payment shall be distributed among such funds or accounts in amounts proportionate to the principal amount payable from each fund or account, in excess of moneys then on hand therein. Any balance then remaining in the Municipal Utilities Fund shall be transferred to each fund or account maintained for payment of obligations constituting a subordinate lien and charge upon said net revenues, in the same manner and in the same order as specified with respect to provision for first lien obligations. Nothing herein shall be deemed to require at any time the return to the Municipal Utilities Fund of any moneys therefor paid into any fund or account as a reserve for the security of obligations payable therefrom, but in the event that the balance in the Municipal Utilities Fund at any subsequent date is not sufficient to permit the transfer of additional sums required, such reserves shall be used for the payment of said obligations and interest thereon before such fund or account may share in the allocation of the balance in the Municipal Utilities Fund, so long as such insufficiency continues. No funds shall be transferred to any fund or account created for payment and security of obligations constituting a subordinate lien upon said Municipal Utilities Fund unless all amounts then and theretofore required to be provided from the Municipal Utilities Fund for payment and security of first lien obligations have been transferred to the funds or accounts from which such first lien obligations are payable, but no moneys properly transferred to a fund or account of payment and security of obligations constituting a subordinate lien as herein provided shall thereafter be required to be returned to the Municipal Utilities Fund.

9-0105. RESERVED FOR FUTURE USE.

(Repealed by Ord. 1062, Sec. 12 (2016))

9-0106. CITY COVENANTS - SUIT BY BONDHOLDERS. The City covenants and agrees with the original purchaser and with each holder from time to time of any obligation issued and made payable from the net revenues of the Municipal Utilities Fund that it will comply promptly and fully with all provisions of the resolutions authorizing the issuance of such obligations and, except and to the extent which may be otherwise provided in such resolutions, with the provisions of this Section, and preceding sections of this chapter.

1. It will complete all improvements financed by the issuance of such obligations with the greatest diligence and economy consistent with good workmanship and efficient operation, and without creating or permitting the creation of any liens or encumbrances on the utility or on the revenues thereof other than those created for the security of such obligations.
2. Until all obligations incurred with respect to the utility are fully paid or otherwise discharged in accordance with the resolutions authorizing the same, the City will continue to own and to operate such utility in an efficient and economical manner and will not authorize or enfranchise the furnishing of similar service by others to any premises within its corporate limits for which the service of such utility is reasonably available.
3. It will revise the schedule of rates, charges and rentals for all services, facilities, commodities and benefits furnished by the utility whenever and as often as needed to comply with Section 9-0102 of this chapter, and will include in each annual budget and pay from other funds a fair and equitable amount for any and all services, facilities, commodities and benefits furnished by the utility to the City or any of its other departments, to be accounted for as part of the revenues.
4. It will at all times maintain books of account adequate to show all receipts and disbursements of funds by the City with respect to the utility, and the segregation and application of such receipts in the accounts of the utility as provided for in this chapter, which books of account shall be made available for inspection during all reasonable business hours by the holder of any obligation for which net revenues of the utility have been pledged, or by his agent or attorney.
5. It will cause the annual financial statement of the City required by the provisions of Section 40-16-05 of the North Dakota Century Code to include a statement as to the financial condition and the receipts and

disbursements of the Municipal Utilities Fund and of the other accounts established by this chapter during each fiscal year, and will furnish a copy of such statement, upon request, to the original purchaser of each issue of bonds or warrants for which net revenues of the utility have been pledged.

6. Upon written demand of the holders of twenty percent (20%) or more of the outstanding bonds or warrants of any issue for which net revenues of the utility have been pledged, the City will cause an audit of the books of account of that utility to be made by a certified public accountant satisfactory to the holders of such obligations, and will pay the cost thereof as an operating expense of the utility, and will furnish a copy of the report of each such audit to such party as shall be designated in such demand.
7. It will at all times keep the properties of the utility insured in the amounts and against the risks for which similar properties are customarily insured by prudent owners thereof, and will maintain such a balance in the Water and Sewer Replacement and Depreciation Fund as will in the reasonable judgment of the Board of City Commissioners be sufficient, with the proceeds of such insurance, to restore any loss or damage, and will carry public liability insurance in an amount adequate to protect against any claim of personal injury or property damage which is or might become a charge against the revenues of the utility, and will cause all persons handling funds of the utility to be bonded in amounts sufficient for the protection of the City and the holders of all such obligations. Such insurance and bonds shall be carried with the State Fire and Tornado Fund or such other reputable and responsible insurers as shall be selected by the Board of City Commissioners, and the expense thereof shall be paid as an operating cost of the utility, and the City will use the proceeds of all such insurance and bonds to restore the loss or damage compensated thereby.
8. The City and its governing body and each and all of its officers and employees will perform fully and promptly all duties with reference to the utility and its revenues and the obligations for which such revenues are pledged, which are imposed by law or by the ordinances and resolutions of the City, including this chapter, in force on the date upon which any such obligations are issued, and all provisions of the Constitution and laws of the State and of such ordinances and resolutions which provide security for the holders of such obligations are acknowledged to be a part of the City's contract with the holders thereof from time to time; provided that nothing

herein shall prevent the amendment of the rates and charges for utility service, to the extent consistent with other provisions of this chapter.

9. The holders of twenty percent (20%) or more of the outstanding principal amount of each issue of bonds or warrants payable in whole or in part from the net revenues of the utility shall be empowered to institute and maintain, in behalf of the holders of all outstanding obligations of the same issue, any suit or proceedings at law or in equity for the protection and enforcement of any covenant, agreement or stipulation made herein or in the resolution authorizing such obligations, whether or not any of such obligations are then in default as to principal or interest, and each and all of the rights and remedies specified in Sections 40-35-15 to 40-35-19 of the North Dakota Century Code are acknowledged to be available to the holders of such obligations. The parties to any such suit or proceeding holding a majority in principal amount of the warrants or bonds held by all such parties shall have power to determine the method of prosecution, compromise or satisfaction thereof. Nothing herein shall prevent the institution of action by any holder of a warrant or bond for the recovery of principal or interest in default.

9-0107. WATER AND SEWAGE SERVICE CHARGES: BILLING BY CITY AUDITOR. The City Auditor shall render a statement on or before the fifth day of each month setting forth separately the charges for water and for sewage service for the preceding month to each premise connected with the water or sewage system.

9-0108. WHEN BILL DUE: FAILURE TO PAY. All bills for water service, sewage service, charges and rentals, and water deliveries and labor and materials furnished each month shall be due and payable on the 15th day of the month at the office of the City Auditor. A monthly late fee, in an amount set by resolution of the City Commission, will be assessed for all payments received after the 15th day of the month. If such bills, or any part thereof, are not paid on or before the 15th day of the succeeding month, the supply of water to the premises for which the bill is rendered may be shut off by the Public Works Director and shall not be turned on again until the entire balance has been paid, together with an amount as set by resolution of the City Commission for recontinuing the service. A fee will also be charged for all returned checks and returned ACH payments, as set by resolution of the City Commission.

Source: Ord. 652, Sec. 1 (2002); Ord. 1062, Sec. 1 (2015)

9-0109. LIABILITY OF OWNERS AND OCCUPANTS FOR SERVICES. The owner and occupant of each premises shall be jointly and severally liable for all charges for water and sewage service and garbage during the period of their respective ownership or occupancy. No

water shall be furnished to any property which is indebted to the Board of City Commissioners.

Source: Ord. 874, Sec. 1 (2010).

9-0110. VALIDITY. All ordinances or parts of ordinances in conflict herewith are hereby repealed. The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part of parts.

CHAPTER 9-02

WATER SERVICE

SECTIONS:

- 9-0201. Water Service Connection - Application.
- 9-0201.1 Permit Fee
- 9-0202. Illegal Connections. Source: Ord. 1062, Sec. 13 (2016)
- 9-0203. Corporation Cock - Curb Stop.
- 9-0204. Stop and Valve - Gate Valve.
- 9-0205. Service Connections.
- 9-0206. Tap Size.
- 9-0207. One Building Per Service.
- 9-0208. Minimum Depth of Service.
- 9-0209. Curb Cock.
- 9-0210. Curb Box Under City Control - Exception.
- 9-0211. Stop Box.
- 9-0212. Plumbers to Close Curb Shut-off.
- 9-0213. Installation and Maintenance Water Service Lines.
- 9-0214. Owner's Responsibility for Supply Line if Location of Leak Uncertain.
- 9-0215. Disconnection.
- 9-0216. Meters May be Required.
- 9-0216.1 RESERVED FOR FUTURE USE.
- 9-0217. One Meter Per Service.
- 9-0218. Meter Repair - Consumer's Duty.
- 9-0219. RESERVED FOR FUTURE USE.
- 9-0220. Duplexes.
- 9-0221. RESERVED FOR FUTURE USE.
- 9-0222. Meter Seals.
- 9-0223. Freezing - Hot Water - Owner's Duty.
- 9-0224. Interference with Water System.
- 9-0225. Approval of City Required Before Use.
- 9-0226. RESERVED FOR FUTURE USE.
- 9-0227. New Pipe Diameter.
- 9-0228. Free Access for Inspection and Reading.
- 9-0229. Solder Not Used in Copper Lines.
- 9-0230. Water Rates and Charges.

9-0201. WATER SERVICE CONNECTION - APPLICATION. Application for Water Service Connections must be made to the City Engineer on forms to be provided by him in writing by the owner or agent of the property to be served, and shall state the following:

1. Location by legal description of the property to be served;
2. The size and kind of pipe proposed to be used;
3. The size of the tap for the water main desired;

4. The approximate course of the water pipe from the place of connection with the water main until it enters the structure proposed to be served;
5. The name of the plumber who will do the work.

Said application shall be accompanied by a fee in an amount set by resolution of the City Commission as the fee for tapping into said water main.

Source: Ord. 966, Sec. 1 (2013)

9-0201.1. PERMIT FEE. No water service connection permit shall be issued by the City Engineer until a fee in the amount set by resolution of the City Commission for each connection shall have been paid for such permit. Such fee shall include the cost of a water meter.

Source: Ord. 966, Sec. 2 (2013)

9-0202. ILLEGAL CONNECTIONS. If the utility finds evidence of willful or intentional bypassing, tampering, or unauthorized metering, a penalty will be imposed in an amount as set by resolution of the City Commission, plus all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering. Reasonable expenses and costs include expenses and costs for investigation, disconnection, reconnection, service calls, employees and equipment, expert witnesses, costs of the suit, and reasonable attorneys' fees.

Source: Ord 1062, Sec. 13 (2016)

9-0203. CORPORATION COCK - CURB STOP.

1. The Corporation Cock shall be Mueller or equal.
2. The Curb Stop shall be Mueller or equal.

9-0204. STOP AND VALVE - GATE VALVE. Every service pipe must have a standard compression stop and valve placed adjacent to and on street side of meter and be kept in working order at all times so that the water may be shut off by the occupant of the premises; there shall also be a gate valve placed on the outlet side of any water meter larger than five-eighths (5/8) of an inch and not more than three (3) feet from the meter, so that the meter can be taken out or replaced without draining the pipe system in the building.

9-0205. SERVICE CONNECTIONS. Service connections shall be made with the following kinds of pipe:

"K" type copper, or equivalent service connection as determined by the City Engineer, with the following exceptions:

That where pipe already under the surface of the ground is proposed to be used, that such portion of

said pipe left remaining under the surface of the ground may be used even though said pipe may be of material other than "K" type copper; except that "K" type copper pipe, or equivalent service connection as determined by the City Engineer, must be used between the water main and the curb cock.

Source: Ord. 1062, Sec. 2 (2016)

9-0206. TAP SIZE. No tap shall be smaller than one (1) inch except that where a tapping sleeve is used, a tap of not larger than two (2) inches may be used.

9-0207. ONE BUILDING PER SERVICE. No new service shall be constructed and no existing service shall be changed in such manner that more than one (1) occupied building shall be on the same service. Outbuilding may not have a separate service.

Source: Ord. 966, Sec. 3 (2013)

9-0208. MINIMUM DEPTH OF SERVICE. All services shall have a minimum depth of six (6) feet below finished grade.

9-0209. CURB COCK. Each service shall have a curb cock fitted with a valve box of not less than one and one-half (1½) inches in diameter at standard location six (6) inches outside of and at the same grade as the sidewalk.

9-0210. CURB BOX UNDER CITY CONTROL - EXCEPTION. The curb box used shall be under the sole control of the City and its employees and no one except an employee or person especially authorized by the City shall open the cover of such box or turn water on or off; provided, however, that licensed plumbers may turn water on or off to test plumbing or make repairs but whenever so used the shut off must be left closed if found closed and open if found open by the plumber who uses it.

9-0211 STOP BOX. The stop box on every service must be kept flush with the surrounding ground or sidewalk surface and must be visible from the sidewalk and must be kept in good condition and ready to use at all times, by the owner. Should the owner neglect to maintain such box and shut off in proper condition to be used, the City shall have the right to clean or repair the same without giving notice and charge the cost thereof to the owner; and if payment is refused may turn off the water in the service until the same is paid.

9-0212. PLUMBERS TO CLOSE CURB SHUT-OFF. Plumbers installing water service pipes shall close the curb shut-off and leave it closed upon completion of their work, and when pipes are laid to the curb only, they shall close the end of the pipe or fitting with a tight metal plug or cap.

9-0213. INSTALLATION AND MAINTENANCE OF WATER SERVICE LINES. All water service pipes and fixtures from the street main to the premises, including the corporation cock and curb stop shall be installed by and at the expense of the owners, unless the City has previously installed all or part of the service pipe and fixtures. The City will be responsible for maintenance and repair of any leaks or other defects of the water service line and fixtures from the point of connection with the street main through and including the curb cock. The owner of the property of such service line shall be responsible for the maintenance of the service pipes from the curb cock to the premises. If there is not a curb cock for that property, the City will be responsible for maintenance of the service pipes from the main, including corporation cocks, to the property line, and the property owner will be responsible from the property line to the premises. If there is a leak that is the responsibility of the owner to repair and the repair is not promptly made, the City may turn off the water until such repairs have been made, and the expense incurred in shutting off the water shall be charged against such owner and must be paid before water will be turned on again.

Source: Ord. 517, Sec. 2 (1997).

9-0214. OWNER'S RESPONSIBILITY FOR SUPPLY LINE IF LOCATION OF LEAK UNCERTAIN. Where there is a leak in a water supply line and it is uncertain whether such leak is on that part of the line that is the responsibility of the owner or the City, the City may make the necessary excavation, and if such leak is found to be in the service pipe that is the responsibility of the owner to maintain, the property owner shall immediately repair such leak, refill such excavation, and pay the City for the cost of making the excavation. The City may shut off the water to the property if the owner fails or neglects to repair such leak or fails to pay the cost of such excavation.

Source: Ord. 517, Sec. 3 (1997).

9-0215. DISCONNECTION. No plumber or owner of property shall disconnect or remove water supply fixtures or piping from any premise served by City water or alter the same in such a way as to make the service connection unnecessary for the premises without permanently closing off the connection and reporting the same to the City.

9-0216. METERS REQUIRED. Any person, firm or corporation taking water from the water mains is required to use a meter furnished by the City at the expense of the consumer to measure the water used by such consumer. The City shall either install the meter or authorize another person deemed qualified by the City to install the meter. The location of the water meter must be approved by the City.

Source: Ord. 966, Sec. 5 (2013)

9-0216.1. RESERVED FOR FUTURE USE.

(Repealed by Ord. 966, Sec. 6 (2013))

9-0217. ONE METER PER SERVICE. One meter only shall be installed and read on each service.

9-0218. METER REPAIR OR REPLACEMENT. After the initial meter is installed, the City will be responsible for the repair and replacement of the meter.

Source: Ord. 966, Sec. 5 (2013)

9-0219. RESERVED FOR FUTURE USE.

(Repealed by Ord. 966, Sec. 7 (2013))

9-0220. DUPLEXES. For a duplex dwelling there shall be a separate meter and a separate shut-off in the street for each part of the building.

9-0221. RESERVED FOR FUTURE USE.

(Repealed by Ord. 966, Sec. 8 (2013))

9-0222. METER SEALS. Meters shall be sealed and seals not be broken. Meters shall be removed only by employees of the City.

9-0223. FREEZING - HOT WATER - OWNER'S DUTY. Owner or occupant of premises where a meter is installed shall be responsible for its care and protection from freezing and from hot water, and shall give notice when repair is needed.

9-0224. INTERFERENCE WITH WATER SYSTEM. No person shall tamper with or by any cause whatsoever damage, destroy or temporarily place out of service any City water main, gate, valve, stop cock, hydrant or other water system connection or machinery or in any manner interfere with the same anywhere in the City. Nor shall any person in any manner obstruct the access to any stop cock, hydrant or valve connected with any water pipe within the City by means of any timber, brick, building materials or other article, thing or hindrance whatsoever. Nor shall any person open any hydrant within the City without permission of the Superintendent of Waterworks or the permission of the commanding officer of the Fire Department.

9-0225. APPROVAL OF CITY REQUIRED BEFORE USE. All water connections must be approved and inspected by the City or its authorized agent before the water can be turned on and used.

9-0226. RESERVED FOR FUTURE USE.

Source: Repealed by Ord. 652, Sec. 2 (2002)

9-0227. NEW PIPE DIAMETER. New pipe being installed must be at least one (1) inch in diameter.

9-0228. FREE ACCESS FOR INSPECTION AND READING. Authorized employees of the waterworks department shall have free access to any premises supplied with water, at proper times, to inspect and ascertain the condition of the meters and fixtures, or for reading meters, and no owner or occupant shall refuse such employees such access.

9-0229. SOLDER NOT USED IN COPPER LINES. No type of solder shall be used in copper water service lines.

9-0230. WATER RATES AND CHARGES. Water charges shall be on a monthly basis covering the respective monthly periods each year. The term "residential" as used herein shall include all premises occupied and used exclusively as a home by not more than two (2) families. The term "commercial" shall include all other premises. When a charge is determined by metered water consumption, the amount of water on which the charge is based shall be that multiple of One Hundred (100) gallons closest to the actual meter reading.

The owner or occupant of each residential or commercial premises connected with the water works system of the City shall pay for all water used and consumed, a minimum service charge of which shall be full payment for the use of not exceeding Two Thousand (2,000) gallons of water. Said service charge shall be as set by resolution of the City Commission.

Such rates and charges shall always yield gross revenues at least adequate to pay all current costs of operation and maintenance of such system and produce net revenues sufficient for the prompt and full payment of all amounts payable by the City in respect to money borrowed for the improvement of the water system.

In addition, a surcharge, as set by resolution of the City Commission, shall be added to all water bills. The proceeds of such surcharge shall be placed into a special vector control fund and be used only for purposes of funding the City's vector control program.

An additional surcharge, as set by resolution of the City Commission, will be added to all water bills. The proceeds of this surcharge shall be placed into a special forestry fund and be used only for purposes of funding grass and tree maintenance on public property, including public rights-of-way, in the City.

Source: Ord 417, Sec. 1 (1991); Ord. 627, Sec. 1 (2001); Ord. 683, Sec. 1 (2003); Ord. 724, Sec. 1 (2004); Ord. 764, Sec. 1 (2005); Ord. 810, Sec. 1 (2007); Ord. 834, Sec. 1 (2008); Ord. 874, Sec. 2 (2010); Ord. 1062, Sec. 3 (2016)

CHAPTER 9-03

SEWER SERVICE

SECTIONS:

- 9-0301. RESERVED FOR FUTURE USE.
- 9-0302. RESERVED FOR FUTURE USE.
- 9-0303. RESERVED FOR FUTURE USE.
- 9-0304. RESERVED FOR FUTURE USE.
- 9-0305. Sewage Rates.
- 9-0306. Surcharge Rate Schedule.
- 9-0307. RESERVED FOR FUTURE USE.
- 9-0308. Sewage Rentals - Rates to Those Having Private Water Supply.
- 9-0309. Sewage Rentals - Exceptions.
- 9-0310. Review of Each User's Wastewater Service Charge.
- 9-0311. Administrative Penalties.
- 9-0312. RESERVED FOR FUTURE USE.
- 9-0313. Use of Public Sewers Required.
- 9-0314. Private Wastewater Disposal.
- 9-0315. Out of City Sewer Connection - Construction and Maintenance.
- 9-0316. Out of City Sewer Connection - Inspection of - Fee.
- 9-0317. Out of City Sewer Connections - Rentals.
- 9-0318. Definitions.
- 9-0319. Sanitary Sewer, Building Sewers and Connections.
- 9-0319.1 Maintenance of Sewer Lines from Sewer Main to Premises
- 9-0320. Use of Pubic Sewers.
- 9-0321. Prohibitions and Limitations on Wastewater Discharges.
- 9-0322. Testing Methods.
- 9-0323. Enforcement Procedures.
- 9-0324. Protection from Damage.
- 9-0325. Power and Authority of Inspectors.
- 9-0326. Penalties.
- 9-0327. Savings Clause - Conflict.
- 9-0328. Inspection and Surcharge Authority Regarding Improper Connection to Sewer System

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- 9-0301. RESERVED FOR FUTURE USE.
 - 9-0302. RESERVED FOR FUTURE USE.
 - 9-0303. RESERVED FOR FUTURE USE.
 - 9-0304. RESERVED FOR FUTURE USE.

9-0305. SEWAGE RATES. Sewer charges shall be on a monthly basis covering the respective monthly periods each year. The term "residential" as used herein shall include all premises occupied

and used exclusively as a home by not more than two (2) families. The term "non-residential" shall include all other premises. When a charge is determined by metered water consumption, the amount of water on which the charge is based shall be that multiple of one thousand (1,000) gallons closest to the actual meter reading.

The owner or occupant of each residential or non-residential premises connected with the sewer system of the City shall pay a minimum service charge per month as set by resolution of the City Commission.

In addition to the minimum service charge, all residential premises shall pay an additional charge as set by resolution of the City Commission per 1,000 gallons for flows greater than 10,000 gallons of water per month.

In addition to the minimum service charge, all non-residential premises shall pay an additional charge as set by resolution of the City Commission per 1,000 gallons for all flows greater than 1,000 gallons of water per month.

The City Commission shall set, by resolution, all charges for users of the West Fargo sewer treatment works that are located outside the city limits of the City of West Fargo and discharge more than 1,000,000 gallons per month into the sewage treatment facilities of the City.

Source: Ord. 313, Sec. 5 (1982); Ord. 379, Sec. 2 (1987); Ord. 417, Sec. 2 (1991);
Ord. 528, Sec. 1 (1998); Ord. 627, Sec. 2 (2001); Ord. 724, Sec. 2 (2004);
Ord. 1062, Sec. 4 (2016)

9-0306. SURCHARGE RATE SCHEDULE. Any non-residential user with a 5-day Biochemical Oxygen Demand (BOD5) greater than 250 mg/l BODs and Total Suspended Solids (TSS) greater than 300 mg/l TSS will be assessed a surcharge as set by resolution of the City Commission.

Source: Ord. 313, Sec. 6 (1982); Ord. 417, Sec. 3 (1991); Ord. 515, Sec. 2 (1997);
Ord. 1062, Sec. 5 (2016)

9-0307. RESERVED FOR FUTURE USE.

9-0308. SEWAGE RENTALS - RATES TO THOSE HAVING PRIVATE WATER SUPPLY. All cooling water and other water disposed of into the sewage system after usage for cooling or other purposes coming from private wells or other sources than the City distribution system, shall be subject to a sewage service charge in accordance with the rates hereinbefore set forth just the same as if the source of water supply were from the City distribution system. The user and/or consumer of such private water supply shall meter the water taken from such private water supply and the meter shall be subject to the inspection, testing, approval and seal of the Superintendent of the Water and Sewage System in the same manner as if the supply were taken and purchased from the City, and a monthly service charge, as set by resolution of the City Commission, shall be

collected by the City in the same manner as if the water was furnished by the City, to the said users or consumers.

Source: Ord. 313, Sec. 8 (1982); Ord. 1062, Sec. 6 (2016)

9-0309. SEWAGE RENTALS - EXCEPTIONS. No sewage rental shall be charged or collected upon water meter readings for water which is carried out of the City for use. This section shall not be construed as exempting from sewage charges water which is used for processing purposes within the City though the product thereof is carried outside of the City for use but shall apply only to water users actually hauling or carrying the water beyond the City limits for use. The City Commissioner having the water and sewage portfolio, the Superintendent of the Water and Sewage System and the City Engineer are hereby designated as a Board of Adjustment who shall have the power to advise and agree with the consumers as to the proper methods and basis for determining what proportion of any consumer's water is actually carried out of the City for use and may bind the City by such agreement until such time as the facts concerning such use have changed.

9-0310. REVIEW OF EACH USER'S WASTEWATER SERVICE CHARGE. The City shall review the total annual cost of operation and maintenance as well as each user's Wastewater Contribution Percentages on an annual basis and will revise the system as necessary to assure equity of the service charge system established herein and to assure that sufficient funds are obtained to adequately operate and maintain the wastewater system. If a significant user, such as an industry, has completed in-plant modifications which would change that user's Wastewater Contribution Percentages, the user can present at a regularly scheduled meeting of the governing body such factual information and the City shall then determine if the user's Wastewater Contribution Percentages are to be changed. The City shall notify the user of its findings as soon as possible. Each user will be notified, at least annually, in conjunction with the regular billing, of the rate and that portion of the user charges which are attributed to Wastewater Treatment Services.

9-0311. ADMINISTRATIVE PENALTIES. The City shall have the authority to levy an administrative penalty upon any User whose discharge into the sewer sanitation system violates any provision of Title IX, Chapter 9-03 or who commits a nuisance as defined in Section 15-0317(1) of these ordinances (relating to objectionable odorous air contaminants).

The administrative penalty shall be up to \$1,000 per day for each day there is a violation. The Public Works Director shall notify any industrial user, in writing, of any administrative penalty to be assessed each month, which notice shall set forth the number of days in violation and the total amount of the administrative penalty which will be added to the utility bill of the industrial user on the next billing. Such notice shall be sent

by certified or registered mail. The industrial user who is informed of the administrative penalty shall have seven (7) days from the date the certified or registered letter was mailed in which to request, in writing, a hearing on the issue of whether or not it committed the violation(s) set forth in the letter received from the Public Works Director. Such letter must be filed with the City Auditor of the City of West Fargo. Upon receipt of such a letter, in a timely fashion the City Auditor shall set the matter for hearing at the next City Commission meeting. The industrial user claiming that the basis for the penalty is incorrect shall have the burden at that hearing to establish that the violation(s) set forth by the Public Works Director in his letter are incorrect. The City Commission shall either confirm the determination of violation by the Public Works Director or modify or eliminate the penalty if the evidence is such that it establishes that there was a lesser or no violation. The City Commission shall have the option to continue the hearing to the next City Commission meeting to obtain additional evidence if the Commission deems that necessary. Payment of the administrative penalty shall be stayed until the City Commission has acted on any appeal.

Such administrative penalty shall not preclude the Public Works Director from bringing a show cause hearing pursuant to Section 9-0323 for violation of permits in regard to violations set out above if the Public Works Director deems that the violation is serious and that other enforcement actions in addition to the administrative penalty may be necessary.

SOURCE: Ord. 515, Sec. 3 (1997); Ord. 528, Sec. 2 (1998); Ord 699, Sec. 1 (2004)

9-0312. RESERVED FOR FUTURE USE.

9-0313. USE OF PUBLIC SEWERS REQUIRED. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City of West Fargo, or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.

It shall be unlawful to discharge to any natural outlet within the City of West Fargo, or in any area under the jurisdiction of said City, any sewage or other polluted waters except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, the City and abutting on any street, alley, or right-of-way in which

there is now located or may in the future be located a public sanitary or combined sewer of the City, is hereby required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this ordinance, within 60 days after date of official notice to do so, provided that said public sewer is within 200 feet (61 meters) of the property line.

9-0314. PRIVATE WASTEWATER DISPOSAL. Where a public sanitary or combined sewer is not available under the provisions of Section 13, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this Section.

Before commencement of construction of a private wastewater disposal system the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the Superintendent. A permit and inspection fee as set by resolution of the City Commission shall be paid to the City at the time application is filed.

A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. The Superintendent shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the Superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 24 hours of the receipt of notice by the Superintendent.

The type, capacities, location, and layout of a private wastewater disposal system shall comply with all recommendations and/or regulations of the North Dakota State Department of Health. No permit shall be issued for any private wastewater disposal system not meeting these conditions. No septic tank or cesspool shall be permitted to discharge to any natural outlet or to the ground surface.

At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in this Section, a direct connection shall be made to the public sewer within sixty (60) days in compliance with this ordinance, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no

expense to the City. All sludge or solids, to be disposed of from a septic tank, cesspool, or other individual method of disposal shall be disposed of by a licensed septic tank pumper in accordance with the North Dakota State Health Department Regulation 23-19-01.

No statement contained in this Section shall be construed to interfere with any additional requirements that may be imposed by the local Health Officer.

Source: Ord. 313, Sec. 14 (1982); Ord. 1062, Sec. 7 (2016)

9-0315. OUT OF CITY SEWER CONNECTION - CONSTRUCTION AND MAINTENANCE. No sewer service shall be connected to the systems of the City of West Fargo, North Dakota, to serve property lying outside of the corporate limits of the City unless and until such persons, firm or corporation desiring to so connect shall first enter into an agreement with the City that he will construct and maintain in good repair at his own expense under the direction and supervision and according to the instruction of the City Engineer, the necessary service pipe to serve his premises, all in compliance with all ordinances and shall guarantee for himself and his successors in interest to construct, maintain and repair any and all manholes which may be required on the service sewer. Provided further that no sewer service shall be connected to the systems of the City of West Fargo, North Dakota, to serve property lying outside of the corporate limits of the City unless and until such person, firm or corporation desiring to so connect shall first enter into an agreement with the City that he will construct and maintain all buildings and structures located on said property in accordance with the building, plumbing and electrical codes of the City of West Fargo, North Dakota, and that he will submit to inspections by the proper and appropriate inspectors for said City to determine and certify compliance with said building, plumbing and electrical codes.

9-0316. OUT OF CITY SEWER CONNECTION - INSPECTION OF - FEE. Such person, firm or corporation shall comply with all ordinances relating to the proper installations of sewer and water pipe, traps, fixtures, soil pipe, and stacks. Inspection shall be made by the City plumbing inspector to observe that all ordinances pertaining thereto are complied with and for this additional service of inspection an additional fee as set by resolution of the City Commission shall be paid to the City to cover the costs of inspection. Said fee shall accompany the application for sewer service connection.

Source: Ord. 313, Sec. 16 (1982); Ord. 1062, Sec. 8 (2016)

9-0317. OUT OF CITY SEWER CONNECTIONS - RENTALS. Such person, firm or corporation shall pay to the City of West Fargo the monthly sewage rental and service charge at the rates above set forth, and shall guarantee for himself and his successors in

interest the payment of such charges imposed by this title or any amendments thereto, whether incurred by the owner or by any other persons occupying said premises during his ownership thereof. Such charges shall be collected with the water rentals of the City and shall become due and delinquent upon the same dates as the water bills upon which the same are charged; upon the failure to pay the said sewage rental and/or service charge the Superintendent of the Water and Sewer System shall have the same authority to shut off the water and he shall refuse to reconnect the same as is herein provided in case of default in the payment of sewage bills for those living inside of the City. Whenever the Superintendent of the Water and Sewer System shall have shut off water services provided herein for the failure of the owner or occupant to pay the sewage rental and/or service charge, such service shall not be reinstated until all of the past due bills for sewage service are paid in full.

9-0318. Definitions. The following words, terms, and phrases are hereby defined and shall be interpreted as such throughout this chapter. Terms not herein defined shall have the meaning customarily assigned to them:

1. "Approval Authority" shall mean the Director in an NPDES state with an approved state pretreatment program and the appropriate EPA Regional Administrator in a non-NPDES state or NPDES state without an approved State pretreatment program.
2. "BOD (biochemical oxygen demand)" shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Celsius expressed in milligrams per liter.
3. "Building drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the interface of the building wall.
4. "Building sewer (also house connection or service sewer)" shall mean the extension from the building drain to the public sewer or other place of disposal.
5. "Chapter" shall mean Chapter 9-03 of the Revised Ordinances of the City of West Fargo, North Dakota.
6. "City" shall mean the City of West Fargo, a municipal corporation of the State of North Dakota.

7. "Clean Water Act" shall mean the Federal Water Pollution Control Act, Public Law 92-500, also known as the Clean Water Act, including the amendments made by the Clean Water Act of 1977, Public Law 95-217 and any amendments hereafter adopted.
8. "Combined Sewer" shall mean a sewer intended to receive both wastewater and storm or surface water.
9. "Commercial or institutional users" shall mean all nonresidential users which introduce only sanitary sewage or primarily segregated domestic wastes into a building sewer.
10. "Control authority" shall mean the superintendent of wastewater facilities, and/or wastewater treatment works, and/or of water pollution control plant of the city or his authorized deputy, agent, or representative.
11. "Director" shall mean the superintendent of wastewater facilities, and/or wastewater treatment works, and/or of water pollution control plant of the city or his authorized deputy, agent, or representative.
12. "Discharge or Indirect Discharge" shall mean the introduction of pollutants into the City's wastewater facilities from any non-domestic source regulated under Section 307(b)(c) or (d) of the Clean Water Act.
13. "Easement" shall mean an acquired legal right for the specific use of land owned by others.
14. "Floating Oil" shall mean oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be Considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the wastewater facilities.
15. "Garbage" shall mean the putrescible animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.
16. "Industrial user or user" shall mean the source of indirect discharge.
17. "Interference" shall mean a Discharge which, alone or in conjunction with a Discharge or Discharges from other sources both:

- (a) Inhibits or disrupts the wastewater facilities, its treatment processes or operations, or its sludge processes, use or disposal; and
 - (b) Therefore is a cause of a violation of any requirement of the wastewater facility's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge, use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act [RCRA]), and including state regulations contained in any state sludge management plan prepared pursuant to subtitle d of the SWDA, the Clean Air Act, the Toxic Substance Control Act, and the Marine Protection Research and Sanctuaries Act.
18. "Industrial waste" shall mean the water-carried wastes from industrial manufacturing or industrial processing as distinct from sanitary sewage. It shall include the trade wastes produced by, but not limited to, food processing and bottling plants, food manufacturing plants, slaughtering plants, tallow works, plating works, disposal services, industrial cleaning plants, fertilizer plants, car and truck washing operations, laundries, Cleaning establishments, cooling plants, industrial plants, factories and chemical treatment installations.
19. "Insignificant industrial users" shall mean those industrial users that discharge only domestic waste, have dry processes, or are considered to have an insignificant impact on the wastewater disposal system.
20. "Letter of intent" shall mean notification from an industrial user to the City of West Fargo of that user's intent to utilize a publicly owned treatment facility for a given period of time.
21. "Natural outlet" shall mean any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface of groundwater.
22. "May" is permissive. (See "Shall").
23. "Significant Noncompliance." An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- (a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all the measurements taken during a six month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- (b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all the measurements for each pollutant parameter taken during a six month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH).
- (c) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);
- (d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under section 9-0323(4) to halt or prevent such a discharge;
- (e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- (f) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (g) Failure to accurately report noncompliance.
- (h) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

24. "National Pollution Discharge Elimination System or NPDES Permit" shall mean a permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

25. "National Pretreatment Standard or Pretreatment Standard" shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 403.5 of CRF.
26. "National Prohibitive Discharge Standard or Prohibitive Discharge Standard" shall mean any regulation developed under the authority of Section 307(b) of the Act and the General Pretreatment Regulations (40 CFR 403.5).
27. "New Source" shall mean any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:
- (a) The building, structure, facility or installation is constructed at a site at which no other source is located; or
 - (b) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (c) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent factors such as the extent to which the new facility is integrated with the existing plant and to the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs 26(b), or 26(c) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

- (a) begun or caused to begin as part of a continuous onsite construction program:
 - (i) Any placement, assembly, or installation of facilities or equipment; or
 - (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - (b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.
28. "Owner or occupant" shall mean the persons using the lot, parcel of land, building or premises located to and discharging sewage into the sewage system of the city, and who pays or is legally responsible for the payment of water rates or charges made against the said lot, parcel of land, building or premises, if connected to the sewage system, or who would pay or be legally responsible for such payments.
29. "Pass through" shall mean a Discharge which exits the wastewater facilities into waters of the United States in quantities or concentrations which alone or in conjunction with a discharge or discharges from other sources is a cause of a violation of any requirement of the wastewater facility's NPDES permit (including an increase in the magnitude or duration of a violation).
30. "Person" shall mean any individual, firm, company, association, governmental agency, society, corporation, group or political subdivision.
31. "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams contained in one liter of solution.
32. "POTW (Publically Owned Treatment Works)" shall mean a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment,

recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plan. The term also means the municipality as defined in section 502(3) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

33. "Premises" shall mean all the parcels or land included in the city in a single assessor's parcel number.
34. "Pretreatment Requirement" shall mean any substantive or procedural requirement related to pretreatment, other than a National Pretreatment Standard, imposed on an industrial user.
35. "Primarily segregated domestic wastes" shall mean that sewage which is introduced into a building sewer and which contains no more than fifty percent (50%) industrial waste, prior to any intentional dilution.
36. "Properly shredded garbage" shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one half ($\frac{1}{2}$) inch (one and twenty-seven hundredths (1.27) centimeters) in any dimension.
37. "Public sewer" shall mean a sewer in publicly owned land or easements and controlled by the City of West Fargo.
38. "Sanitary sewage" shall mean the water-carried wastes from residences, hotels, restaurants, eating houses, or from business establishments or premises engaged solely in the sale, storage or repair of goods, wares or merchandise, and which contains garbage, human wastes, or animal wastes.
39. "Sewage": See "Wastewater."
40. "Sewer" shall mean a pipe or conduit for carrying sewage.
41. "Shall" is mandatory. (See "May").
42. "Significant Industrial User" shall mean any industrial user subject to Categorical Pretreatment Standards; or
 - (a) Any other industrial user that discharges an average of 25,000 gallons per day or more process wastewater to the POTW (excluding sanitary,

noncontact cooling and boiler blowdown wastewater);
or

- (b) contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
- (c) is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

- 43. "Slug" shall mean any discharge of water, sewage, or industrial waste in which concentration of any given constituents or in which quality of flows exceed for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty four hour concentration or flow during normal operation.
- 44. "State" shall mean the State of North Dakota.
- 45. "Storm drain (also storm sewer)" shall mean a sewer which carries storm and surface waters and drainage, but which excludes sewage and industrial wastes other than uncontaminated cooling water.
- 46. "Superintendent" shall mean the superintendent of wastewater facilities, and/or wastewater treatment works, and/or of water pollution control plant of the city or his authorized deputy, agent or representative.
- 47. "Suspended solids (SS)" shall mean total suspended matter that either floats on the surface of, or is in suspension in water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as nonfilterable residue.
- 48. "Unpolluted water" shall mean water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.
- 49. "Wastewater (also sewage)" shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and

institutions, together with any groundwater, surface water, and storm water that may be present.

50. "Wastewater facilities" shall mean the structures, equipment and processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.
51. "Wastewater treatment works" shall mean an arrangement of devices and structures for treating wastewater, industrial waste, and sludge. Sometimes used as synonymous with "waste treatment plant" or "water pollution control plant."
52. "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

Source: Ord. 699, Sec. 2 (2004)

9-0319. SANITARY SEWER, BUILDING SEWERS AND CONNECTIONS. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent.

No sewer service connection permit shall be issued by the City Engineer until a fee for each connection shall have been paid for such permit. All of said fees shall be as set by resolution of the City Commission.

Any party desiring sewer service within Block Three (3) of Lepird's Subdivision of a part of the Southeast Quarter (SE¼) of Section Seven (7), lying East of the Sheyenne River and a part of the South Half (S½) of the Southeast Quarter (SE¼) of the Northeast Quarter (NE¼) of Section Seven (7), Township One Hundred Thirty-nine (139) North, Range Forty-nine (49) West of the Fifth Principal Meridian, Cass County, North Dakota, except Lots One (1) and Two (2) thereof, for premises not heretofore connected with the system shall apply for a connection on a form provided by the municipality. Such application shall be filed with the City Auditor. In the event that the Board of City Commissioners determine that the property connected to the sewer system of the City was not assessed for said improvement in an amount which would be equitable with other assessments, the Board of City Commissioners of the City of West Fargo may charge a hook-up charge in an amount not to exceed the difference between a fair and equitable assessment on the property and the amount actually assessed against said property. Said hook-up charge shall be in addition to any other hook-up charge or permit fee provided by City ordinance.

All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer, but the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all requirements of this ordinance.

The size, slope, alignment, materials of construction of all sanitary sewers including building sewers, and the methods to be used in excavating, placing of the pipe, joints, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. In the absence of suitable code provisions set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

No person shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer, or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the Superintendent and the North Dakota State Department of Health.

The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gas-tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.

The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the Superintendent or his representative.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

Source: Ord. 1062, Sec. 9 (2016)

9-0319.1. MAINTENANCE OF SEWER LINES FROM SEWER MAIN TO PREMISES. The City shall be responsible for maintenance and repair of leaks or other defects in the sewer main. The property owner shall be responsible for maintenance and repairs of leaks or other defects from the end of the "Y" on the sewer main to the premises. If there is a leak and it cannot be determined as to whether the leak is in that part of the line for which the City or the owner has responsibility for repair and maintenance, the City may make the necessary excavation, and if such leak is found to be in the service line on the owner's property, the owner shall immediately repair such leak, refill such excavation, and pay the City for the cost of making the excavation. The City may shut off the water service on any owner who fails or neglects to repair a leak for which they are responsible for maintenance or who fails to pay the cost of the City in making the excavation to determine the location of the leak if the leak is on the property of the owner.

Source: Ord. 517, Sec. 4 (1997); Ord. 1062, Sec. 10 (2016)

9-0320. USE OF PUBLIC SEWERS.

1. Materials prohibited in sewers. No person shall discharge or cause to be discharged to any public sewer any materials which may cause interference with the operation or performance of the wastewater facilities, or which may pass through such wastewater facilities so as to cause the wastewater facilities to violate the terms of its discharge permit or provisions of Federal, State or local laws. No person shall discharge or Cause to be discharged any of the following-described waters or wastes to any public sewers.

(a) Any waters or wastes containing toxic or poisonous solids, liquors gasses in sufficient quantity (either singly or in interaction with other wastes), to contaminate the sludge of any municipal wastewater system, to injure or interfere with any wastewater treatment process, constitute a hazard

to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater facilities; including, but not limited to the following:

Pollutant	Concentration (mg/L)
Copper (Cu)	0.60
Zinc (Zn)	4.33
Chromium VI	0.075
Mercury (Hg)	<0.0002
Nickel (Ni)	2.85
Lead (Pb)	0.171
Cadmium (Cd)	0.01
Silver	0.27
Arsenic	0.96
Benzene	0.05
BTEX*	0.75

*BTEX is the sum of Benzene, toluene, ethylbenzene and xylenes.

Where an industrial user is subject to Categorical Pretreatment Standard(s) that control pollutants not enumerated above, or contain limitations that are more stringent than indicated above, the industrial user is subject to the requirements of the Categorical Pretreatment Standard(s). Under no circumstances shall the industrial user achieve compliance with the above limitations or Categorical Pretreatment Standards by diluting its industrial waste with tap water, unpolluted water, sanitary sewage, or any other liquid diluent. In addition, the City reserves the right to revise the limits set out in this section by amendment of this ordinance.

Source: Ord. 411, Sec. 2 (1991); Ord. 458, Sec. 1 (1994); Ord. 563, Sec. 1 (1999); Ord. 699, Sec. 3 (2004)

2. Industrial Waste Permit.

- (a) No significant industrial user, whether located within or without the city limits of the city, shall discharge wastewater to the public sewers or wastewater facilities without having a valid industrial waste permit issued by the director. A permit may be required for any industrial user as deemed necessary by the director.

Source: Ord. 411, Sec. 2 (1991)

- (b) Industrial users shall comply fully with the terms of their permits in addition to the provisions of this chapter. Violation of a permit condition is deemed a violation of this chapter.
- (c) All significant industrial users shall apply for an industrial waste permit within thirty (30) days after the effective date of this provision. Other persons proposing to connect to the sewer system and determined by the director as requiring an industrial waste permit shall apply at least sixty (60) days prior to commencing discharges to the public sewer. All permittees shall reapply for a new permit between 60 and 180 days prior to the expiration of the old permit.

Source: Ord. 411, Sec. 2 (1991); Ord. 699, Sec. 4 (2004)

- (d) All applications shall be in the form prescribed by the director. The application shall submit, in units and terms suitable for evaluation, all information requested in the application form, and any relevant supplemental information requested by the director.
- (e) An applicant or permittee shall notify the director prior to any new or increased contribution of pollutants or changes in the nature of pollutants not indicated in the permit application, and obtain approval for such increased or new contribution prior to the increased or new discharges.
- (f) Pretreatment permits shall include such conditions as are reasonably deemed necessary by the superintendent to prevent pass through or interference, protect the quality of the water body receiving the POTW's effluent, protect worker health and safety, facilitate POTW sludge management and disposal, protect ambient air quality, and protect against damage to the POTW collection system or plant. Permits may contain, but need not be limited to, the following:
 - (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
 - (2) Limits on the average and/or maximum concentration, mass, or other measure of identified wastewater constituents or properties.

- (3) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
- (4) Development and implementation of spill control plans or other special conditions including additional management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.
- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW.
- (6) Requirements for installation and maintenance of inspection and sampling facilities.
- (7) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
- (8) Compliance schedules.
- (9) Requirements for submission of technical reports or discharge reports.
- (10) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the Superintendent and affording the Superintendent, or his representatives, access thereto.
- (11) Requirements for notification of any new introduction of wastewater constituents or of any substantial change in the volume or character of the wastewater being introduced into the POTW.
- (12) Requirements for the notification of any change in the manufacturing and/or pretreatment process used by the permittee.
- (13) Requirements for notification of excessive, accidental, or slug discharges.
- (14) Other conditions as deemed appropriate by the Superintendent to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

- (15) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable Federal pretreatment standards, including those which become effective during the term of the permit.

Source: Ord. 411, Sec. 2 (1991)

- (g) Permits are valid for three years from date of issuance or permit modification, whichever is later, unless revoked.
- (h) Permits may be reassigned or transferred to a new owner and/or operator with prior approval of the Superintendent:
 - (1) The permittee must give at least thirty (30) days advance notice to the Superintendent.
 - (2) The notice must include a written certification by the new owner which:
 - (i) States that the new owner has no immediate intent to change the facility's operations and processes.
 - (ii) Identifies the specific date on which the transfer is to occur.
 - (iii) Acknowledges full responsibility for complying with the existing permit.

Source: Ord. 411, Sec. 2 (1991)

- (i) The director may modify the permit for good cause, including, but not limited to, the following:
 - (1) To incorporate any new or revised Federal, State, or local pretreatment standards or requirements.
 - (2) Material or substantial alterations or additions to the discharger's operation processes, or discharge volume or character which were not considered in drafting the effective permit.
 - (3) A change in any condition in either the industrial user or the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge.

- (4) Information indicating that the permitted discharge poses a threat to the Control Authority's collection and treatment systems, POTW personnel or the receiving waters.
- (5) Violation of any terms or conditions of the permit.
- (6) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting.
- (7) Revision of or a grant of variance from such categorical standards pursuant to 40 CFR 403.13; or
- (8) To correct typographical or other errors in the permit.
- (9) To reflect transfer of the facility ownership and/or operation to a new owner/operator.
- (10) Upon request of the permittee, provided such request does not create a violation of any applicable requirements, standards, laws, or rules and regulations.

Source: Ord. 411, Sec. 2 (1991)

- (j) Permits may be terminated for the following reasons:
 - (1) Falsifying self-monitoring reports.
 - (2) Tampering with monitoring equipment.
 - (3) Refusing to allow timely access to the facility premises and records.
 - (4) Failure to meet effluent limitations.
 - (5) Failure to pay fines.
 - (6) Failure to pay sewer charges.
 - (7) Failure to meet compliance schedules.

Source: Ord. 411, Sec. 2 (1991)

- 3. Authority to require compliance with Federal Categorical Pretreatment Standards. Upon promulgation of the Federal Categorical Pretreatment Standards (authorized by Section 307 of the Clean Water Act) for a particular industrial subcategory, the Federal Standard, if more stringent than

the limitations imposed under this ordinance, or in the absence of the applicable pretreatment limitations in this ordinance, shall become applicable. The director shall promptly notify all affected industrial users of the reporting requirements contained in 40 CFR 403.12 and shall require that such reports be signed by a duly authorized representative of the industrial user pursuant to the signatory requirements of Section 403.12(1) who certifies as to the completeness of the report in the form required by 40 CFR 403.6(a)(2)(ii).

4. State requirements and limitations on discharges shall apply in any case where they are more stringent than national requirements and limitations or those in this chapter.
5. The City reserves the right to establish more stringent limitations or requirements on discharges to the wastewater disposal system, if deemed necessary, to comply with the objectives presented in this chapter, in the manner provided by law.

Source: Ord. 528, Sec. 4 (1998).

- 6 Authority to require monitoring, sampling, record keeping and related requirements. The director shall have the authority to place all affected industrial users on monitoring, sampling, record keeping, and compliance schedules; to require industrial users to install structures, such as manholes, and sampling equipment needed for monitoring discharges; to receive and analyze reports on progress toward compliance; and insure that all applicable industrial users install the technology necessary to achieve the required levels of treatment specified by the Categorical Pretreatment Standard on or before the deadline specified in the Standard, and other standards and requirements of this chapter. This authority shall be applicable to industries subject to federal categorical pretreatment standards, significant industrial users, and any industrial users who discharge substances identified as prohibited discharges.

Source: Ord. 411, Sec. 2 (1991)

7. Notice of discharges. All industrial users shall notify the superintendent of the wastewater treatment works immediately of all discharges that could cause problems to the wastewater facilities, including any slug loadings. In addition, the director shall evaluate, at least once every two years, whether each such Significant Industrial User needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch

discharge. The results of such activities shall be available to the Approval Authority upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

- (a) Description of discharge practices, including non-routine batch discharges;
- (b) Description of stored chemicals;
- (c) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 40 CFR 403.5(b), with procedures for follow-up written notification within five days;
- (d) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant-site run-off, worker training, building of containment structure or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

Source: Ord. 411, Sec. 2 (1991)

9-0321. PROHIBITIONS AND LIMITATIONS ON WASTEWATER DISCHARGES.

1. Prohibitions on wastewater discharge. No person shall discharge or deposit or cause or allow to be discharged or deposited into the wastewater treatment system any wastewater which contains the following:
 - (a) Oils and grease. (1) Oil and grease concentrations or amounts in excess of 100 milligrams per liter. (2) Wastewater from industrial facilities containing floatable fats, wax, grease or oils; or petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
 - (b) Explosive mixtures. Pollutants which create a fire or explosion hazard in the publicly owned treatment works (POTW), including, but not limited to, wastestreams with a closed cup flashpoint of less than sixty (60) degrees Centigrade (140 degrees Fahrenheit) using the test methods specified in 40 CFR 261.21.

- (c) Noxious material. Noxious or malodorous solids, liquids or gases, which, either singly or by interaction with other wastes, are capable of creating a public nuisance or hazard to life, or are or may be sufficient to prevent entry into a sewer for its maintenance and repair, or pollutants which result in the presence of toxic gasses, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- (d) Improperly shredded garbage. Garbage that has not been ground or comminuted to such a degree that all particles will be carried freely in suspension under flow conditions normally prevailing in the public sewers, with no particle greater than one half inch in any dimension.
- (e) Radioactive wastes. Radioactive wastes or isotopes of such half life or concentration that they do not comply with regulations or orders issued by the appropriate authority having control over their use and which will or may cause damage or hazards to the wastewater facilities or personnel operating the system.
- (f) Solid or viscous wastes. Solid or viscous wastes which will or may cause obstruction to the flow in a sewer, or otherwise interfere with the proper operation of the wastewater treatment system. Prohibited materials include, but are not limited to, grease, uncomminuted garbage, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, and similar substances.
- (g) Excessive discharge rate. Wastewaters at a flow rate or containing such concentrations or quantities of pollutants that exceed for any time period longer than fifteen minutes more than five times the average twenty-four hour concentration, quantities or flow during normal operation and that would cause a wastewater facilities process upset and subsequent loss of treatment efficiency.
- (h) Toxic substances. Any toxic substances in amounts exceeding standards promulgated by the administrator of the United States Environmental Protection Agency pursuant to Section 307(a) of the

Act, and chemical elements or compounds, phenols or other taste or odor-producing substances, or any other substances which are not susceptible to treatment or which may interfere with the biological processes or efficiency of the wastewater facilities system, or that will pass through the system.

- (i) Unpolluted waters. Any unpolluted water including, but not limited to, water from cooling systems or of stormwater origin, which will increase the hydraulic load on the wastewater facilities system unless such discharge or connection is approved by the superintendent and the North Dakota State Department of Health.
- (j) Discolored material. Wastes with objectionable color not removable by the treatment process.
- (k) Corrosive wastes. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works are specifically designed to accommodate such discharges. Prohibited materials include, but are not limited to, acids, sulfides, concentrated chloride and fluoride compounds and substances which will react with water to form acidic products.
- (l) Heat. Heat in amounts which will inhibit biological activity in the POTW resulting in interference but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds forty (40) degrees Centigrade (104 degrees Fahrenheit).
- (m) Pollutants. Any pollutant, including oxygen demanding pollutants (e.g., BOD), released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW.
- (n) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

Source: Ord. 411, Sec. 3 (1991)

9-0322. TESTING METHODS. All sampling and analysis activities required by this chapter or any permits issued hereunder shall conform with the procedures set out in 40 CFR part 136.

9-0323. ENFORCEMENT PROCEDURES.

1. Notification of violation. Whenever the director finds that any person has violated or is violating any provisions of this chapter, or any prohibition, limitation or requirement contained herein, he may serve upon such person a written notice stating the nature of the violation which may provide a reasonable time, not to exceed thirty days, for the satisfactory correction thereof.
2. Show Cause Hearing.
 - (a) If there is a violation, or the violation is not corrected by timely compliance as provided for in the notice, the director may order any person who causes or allows an unauthorized discharge to show cause before the Board of City Commissioners why service should not be terminated or suspended. A notice shall be served on the offending party, specifying the time and place of a hearing to be held by the Board of City Commissioners regarding the violation, and directing the offending party to show cause before said Board of City Commissioners why an order should not be made directing the termination of service. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten days before the hearing. Service may be made on any agent or officer of a corporation.
 - (b) The Board of City Commissioners may itself conduct the hearing and take the evidence, or may designate any of its members or any officer or employee of the water and sewer department to:
 - (i) Issue in the name of the Board of City Commissioners notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearings.
 - (ii) Take the evidence.
 - (iii) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Board of City Commissioners for action thereon.
 - (c) At any public hearing, testimony taken before the hearing authority or any person designated by it, must be under oath and recorded stenographically. The transcript so recorded, or any part of the hearing, will be made available to any member of

the public upon payment of the usual charges therefor.

- (d) After the Board of City Commissioners has reviewed the evidence, it may issue an order to the party responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed or existing treatment facilities, devices or other related appurtenances are properly operated. In addition, the City Commission may levy administrative penalties not to exceed \$1,000 for each unauthorized discharge or noncompliance for each day such violation continues. The City Commission may issue such other and further orders and directives as are necessary and appropriate.

Source: Ord. 528, Sec. 5 (1998).

3. Legal action. Any violation of the substantive provisions of this chapter or any permit or order of the Board of City Commissioners shall be considered a nuisance, and the City Attorney may commence an action for appropriate legal and/or equitable relief in the District Court of Cass County.
4. Prevention of discharge. Notwithstanding the provisions of Sections 1 through 3 of Section 9-0323, the Director shall have authority to immediately halt or prevent any discharge of any pollutants to the City's wastewater facilities which reasonably appears to present an imminent endangerment to the health or welfare of persons. Prior to exercising this authority, the Director shall notify the President of the Board of City Commissioners, the City Auditor, or any City Commissioner, and shall also orally inform the discharger. The notice to the discharger shall, if possible, be made to an officer of the discharger, or the local manager of the plant. In the absence of those persons, notice may be given to any employee of the discharger. If any discharge to the wastewater facilities presents or may present an endangerment to the environment or which threatens to interfere with the operations of the wastewater facilities, the Director shall seek immediate injunctive relief in the District Court of Cass County.

9-0324. PROTECTION FROM DAMAGE.

1. Prosecution for damage to system. No unauthorized person shall maliciously, willfully, or negligently break,

damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the wastewater facilities.

9-0325. POWER AND AUTHORITY OF INSPECTORS.

1. Inspection of premises. The director and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling and testing to determine compliance with the provisions of this chapter or any permits issued thereunder. The director or his duly authorized representative shall have the authority to examine and copy any and all records required to be maintained by industrial users for the purpose of determining compliance with Pretreatment Standards and Requirements. The director or his representatives shall have authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other processes.
2. Public access to information. Any records, reports or information obtained under this article (1) shall, in the case of industrial user effluent data, be related to any applicable discharge limitation or prohibition, or permit condition, and (2) shall be available to the public except upon a showing satisfactory to the director by any person that such records, reports, or information, or particular part thereof, (other than effluent data) to which the director has access under this article, if made public would divulge methods or procedures entitled to protection as trade secrets of such person. The industrial user is responsible for stamping or marking each page "confidential" that the user is designating as confidential. Effluent data are considered nonconfidential. The director shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of this chapter, except that such record, report, or information may be disclosed to the State of North Dakota or the United States concerned with carrying out the provisions of the Clean Water Act or when relevant in any proceeding under this chapter or other applicable laws.

Source: Ord. 699, Sec. 5 (2004)

3. Published reports. The Director, annually, shall publish in the official newspaper of the city, a notification of industrial users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment requirements. In addition, the director will publish in the official newspaper of the city a notice of intent to issue a pretreatment

permit, at least fourteen (14) days prior to issuance. The notice will indicate a location where the draft permit may be reviewed and an address where written comments may be submitted. The director will provide all interested persons with notice of final permit decisions. Upon notice of the director, any person, including the industrial user, may petition to appeal the terms of the permit within thirty (30) days of the notice.

- (a) Failure to submit a timely petition for review shall be deemed to be a waiver of the appeal.
- (b) In its petition, the appealing party must indicate the permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to be placed in the permit.
- (c) The effectiveness of the permit shall not be stayed pending a reconsideration by the City Commission. If, after considering the petition and any argument put forth by the director, the City Commission determines that reconsideration is proper, it shall remand the permit back to the director for reissuance. Those permit provisions being reconsidered by the director shall be stayed pending reissuance.
- (d) The City Commission's decision not to reconsider a final permit shall be considered the final administrative action for purposes of judicial review.

Source: Ord. 411, Sec. 4 (1991)

9-0326. PENALTIES.

- 1. Any person found to be violating any provision of this chapter shall be served by the city with written notice stating the nature of the violation which may provide a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
- 2. Violation a misdemeanor. Any person violating the provisions of this chapter, or who continues the violation beyond any time limit provided for in the above notice, shall be guilty of a misdemeanor, punishable by a fine of \$1,500 and a maximum jail sentence of sixty (60) days or, the maximum allowed by state law if less than that set out above. Each day in which any such violation shall continue shall be deemed as a separate offense. The City, at its option, may pursue criminal penalties, administrative penalties, or both.

3. Damages. In addition to any civil and criminal liability, any person violating any of the provisions of this chapter or permit, or causing damage to or otherwise inhibiting the city wastewater disposal system, shall become liable to the city for any expense, loss or damage caused by such violation or discharge. The city shall bill the permittee or person for the costs incurred by the city for any cleaning, repair or replacement work caused by the violation or discharge. Refusal to pay the assessed costs shall constitute a separate violation of this chapter.
4. Costs. In addition to any administrative or criminal penalty provided in this Chapter, the City may recover reasonable attorney fees, court costs, court reporter fees, and other expenses incurred by the City in any civil or criminal litigation, or incurred in conducting an order to show cause hearing. In a civil or criminal action the court hearing the action shall determine such costs. In an administrative order to show cause hearing before the City Commission, the Commission shall determine the costs. Refusal to pay the assessed costs shall constitute a separate violation of this chapter.

Source: Ord. 411, Sec. 5 (1991); Ord. 528, Sec. 6 (1998); Ord. 961, Sec. 2 (2013)

9-0327. SAVINGS CLAUSE -- CONFLICT. In the event that any provision, paragraph, word, section or chapter of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect; all ordinances and parts of ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

9-0328. INSPECTION AND SURCHARGE AUTHORITY REGARDING IMPROPER CONNECTION TO SEWER SYSTEM.

1. Section 9-0319 and Section 9-0321(1) (i) of the Revised Ordinances of 1990 of the City of West Fargo prohibit any person from discharging or causing to be discharged any storm water, groundwater, roof runoff, yard drainage, yard fountain or pond overflow into the sanitary collection system. Any disconnects or openings in the sanitary sewer shall be closed or repaired in an effective, workmanlike manner, as approved by the City Engineer.
2. Every person owning improved real estate that discharges into the City's sanitary sewer system shall allow the City employee(s) to inspect the buildings to confirm that there is no sump pump or other prohibited discharge into the sanitary sewer system. Any person may furnish a

certificate from a licensed plumber certifying that their property is in compliance with paragraph 1 of this section in lieu of having the City inspect their property. Any person refusing to allow their property to be inspected or refusing to furnish a plumber's certificate within fourteen (14) days of the date City employee(s) are denied admittance to the property shall immediately become subject to the surcharge hereinafter provided for. Any property found to violate paragraph 1 of this section shall make the necessary changes to comply with paragraph 1 and furnish proof of the changes to the City within thirty (30) days of the notice of violation.

3. A monthly surcharge as set by resolution of the City Commission is hereby imposed and added to every sewer billing to property owners who are not in compliance with paragraph 1 of this section. The surcharge shall continue to be levied monthly for the months of April through October (both inclusive) of every year on properties not complying with paragraph 1 of this section. Provided, the surcharge shall not be charged unless a property has been inspected and found to be in noncompliance, or if the person owning improved real estate refuses to allow an inspection and does not provide a plumber's certificate as set forth in paragraph 2 of this section.
4. The President of the Board of City Commissioners shall appoint a committee of three (3), who shall act as an appeals board regarding the enforcement of Section 9-0328. This committee shall have the authority to grant exemptions from strict compliance with the terms of Section 9-0328 for a particular property owner who can establish unique and extenuating circumstances which would justify an exemption from strict compliance with the terms of Section 9-0328. The committee may grant seasonal waivers which would allow for discharge into the sanitary system between November 1 and April 1 for residences whose sump pumps continue to run during that period of year and for which discharge to the exterior would lead to icy conditions or the breaking of pipes or related problems. An appeal to the City Commission from a decision of the committee must be filed within thirty (30) days from the date of the decision. A vote of four (4) members of the City Commission shall be necessary to overturn any decision of the committee.
5. If a seasonal waiver is granted, the owner of the property may place a pipe connecting the sump pump to the sanitary sewer, which must have a shut-off valve. City staff, on or around April 1 each year, will close the

valve so that no water can reach the sanitary sewer line and place a seal on that valve. City staff, on or about November 1 of each year will remove the seal and open the valve to allow discharge into the sanitary sewer system if the owner desires. No person other than City staff may remove the seal and change the valve. If upon inspection by City staff the seal has been tampered with, the owner of the property will be charged a monthly surcharge, as set by resolution of the City Commission, for each month between the discovery of the tampering and the last inspection by City staff. By applying for the waiver, the owner has also granted permission to City staff to inspect the connection and seal anytime between April 1 and November 1 to determine whether or not the seal has been tampered with. Such inspections must be made between 8:00 a.m. and 8:00 p.m. and only when a resident of the premises is on site. Failure to allow such an inspection or to allow the City staff entry around November 1 and April 1 to switch the valves and place on or remove the seal shall result in automatic revocation of the seasonal waiver. In addition, if at any time City staff determines that the seal has been tampered with, the result will not only be the surcharge set forth above, but also automatic revocation of the seasonal waiver.

6. Any person granted a seasonal waiver shall be billed a yearly amount as set by resolution of the City Commission as part of their water and sewer bill to cover the cost of City staff and the additional cost in treating the extra water during the period of the waiver. If a person is granted a permanent waiver as opposed to a seasonal waiver, a monthly surcharge as set by resolution of the City Commission shall be added to the water and sewer bill to compensate the City for the extra cost of treating the additional water entering the sanitary sewer system from that premise.
7. When a structure is being constructed in the City of West Fargo, if at or prior to final inspection City staff determines that the sump pump connection has been illegally connected to the City's sanitary sewer system, or that there is another connection or device or lack of a plug which allows surface runoff or groundwater to enter into the sanitary sewer system, either permanently or temporarily, there shall be levied an administrative fine against the general contractor for the structure found to be in violation. If after 24 hours after written notice from the City the general contractor has not remedied the situation so that no surface runoff or groundwater can enter into the City's sanitary sewer system, there shall be an additional administrative fine

for each day such a violation exists. Said administrative fines shall be set by resolution of the City Commission. In addition, the Building Inspector shall not issue another building permit within the jurisdiction of the Building Inspector of the City of West Fargo for that contractor until the violation has been remedied and any administrative fine has been fully paid to the City. The procedure for handling the administrative penalty as far as notice, right to appeal, and hearing shall be the same procedure as set out in Section 9-0311.

Source: Ord. 426, Sec. 1 (1992); Ord. 546, Sec. 1 (1998); Ord. 1062, Sec. 11 (2016)

CHAPTER 9-04

STORM WATER MANAGEMENT (Source: Ord. 743, Sec. 1 [2006])

SECTIONS:

- 9-0401. General Provisions.
 - 9-0402. Storm Water Management Plan - Application and Review.
 - 9-0403. Storm Water Management Plan - Approval Standards.
 - 9-0404. Storm Water Management Permits.
 - 9-0405. Suspension, Revocation and Stop Work Orders.
 - 9-0406. Violations and Enforcement.
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9-0401. GENERAL PROVISIONS.

- A. Purpose. This chapter sets forth uniform requirements for storm water management systems within the City of West Fargo. In the event of any conflict between the provisions of this chapter or other regulations adopted by the City of West Fargo, State or Federal authorities, the more restrictive standard prevails. The objectives of this chapter are as follows:
- 1. To promote, preserve, and enhance the natural resources within the City of West Fargo from adverse or undesirable impacts occasioned by development or other activities;
 - 2. To protect and promote the health, safety, and welfare of the people and property through effective storm water quantity and quality management practices.
 - 3. To regulate land development activity, land disturbing activity, or other activities that may have an adverse and/or potentially irreversible impact on storm water quantity, water quality and/or environmentally sensitive lands and to encourage compatibility between such uses;
 - 4. To establish detailed review standards and procedures for land development activities throughout the City of West Fargo, thereby achieving a balance between urban growth and development and the protection of water quality; and
 - 5. To provide for adequate storm water system analysis and design as necessary to protect public and private property, water quality and existing natural resources.

This Chapter applies in the City of West Fargo, North Dakota, and to persons outside the City who are, by contract or agreement with the City, users of the City storm water management system. Except as otherwise provided herein, the City Public Works Director shall administer, implement, and enforce the provisions of this Chapter.

- B. Definitions. For the purpose of this chapter, the following terms, phrases, and words, and their derivatives, shall have the meaning as stated in this section. When inconsistent with the context, words used in the present tense include the future tense. Words in plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and the word "may" is always permissive.
1. "Applicant" shall mean any person or group that applies for a building permit, subdivision approval, zoning change, approach, excavation or special use permit, storm water plan approval, storm water management permit or any other permit which allows land disturbing activities. Applicant also means that person's agents, employees, and others acting under this person's or group's direction. The term "applicant" also refers to the permit holder or holders and the permit holder's agents, employees, and others acting under this person's or group's direction.
 2. "Base Flood," "Regional Flood," or "100 Year Flood" shall mean the flood having a one percent chance or probability of being equaled or exceeded in any given year (i.e., 100-year flood) - also referred to as the regional flood or 100-year flood.
 3. "Best Management Practices (BMP)" shall mean erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing the degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by federal, state, or designated area-wide planning agencies or included in the City of West Fargo Storm Water Standards.
 4. "BMP's" shall mean measures designed to 1) prevent pollutants from leaving a specific area; 2) reduce/eliminate the introduction of pollutants; 3) protect sensitive areas or 4) prevent the interaction between precipitation and pollutants.

5. "Buffer" shall mean a protective vegetated zone located adjacent to a natural resource, such as a water of the state that is subject to direct or indirect human alteration. Such a buffer strip is an integral part of protecting an aquatic ecosystem through trapping sheet erosion, filtering pollutants, reducing channel erosion and providing adjacent habitat.

The buffer strip begins at the "ordinary high water mark" for wetlands and the top of the bank of the channel for rivers and streams.

6. "City" shall mean the City of West Fargo or the City Commission of the City of West Fargo.
7. "City Public Works Director" shall mean the City Public Works Director of the City of West Fargo or authorized agent.
8. "Commission" shall mean the City Commission of the City of West Fargo.
9. "Common Plan of Development or Sale" shall mean a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, or on different schedules, but under one proposed plan. This item is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land disturbing activities may occur.
10. "Control Measure" shall mean a practice or combination of practices to control erosion and attendant pollution, see also Best Management Practices.
11. "Detention facility" shall mean a natural or manmade structure, including wetlands used for the temporary storage of runoff and which may contain a permanent pool of water, or may be dry during times of no runoff.
12. "Development" shall mean any land disturbance activity that changes the site's runoff characteristics in conjunction with residential, commercial, industrial or institutional construction or alteration.
13. "Developer" shall mean a person, firm, corporation, sole proprietorship, partnership, federal or state agency, or political subdivision thereof engaged in

a land disturbance and/or land development activity.

14. "Discharge" shall mean the release, conveyance, channeling, runoff, or drainage, of storm water, including snow melt.
15. "Drainage Easement" shall mean a right to use the land of another for a specific purpose, such as a right-of-way for the movement of water across or under the land surface or the storage of water.
16. "Erosion" shall mean removing the surface of the land by the action of water, wind, ice, or gravity. Erosion can be accelerated by the activities of man and nature.
17. "Erosion Control" refers to methods employed to prevent erosion. Examples include soil stabilization practices, horizontal slope grading, temporary or permanent cover, and construction phasing.
18. "Erosion & Sediment Control Plan (E&S Control Plan)" shall mean a written description and/or plan indicating the number, locations, sizes, and other pertinent information about best management practice methods designed to reduce erosion of the land surface and the deposition of sediment within a waterway. An E&S Control Plan is required as part of a Storm Water Management Plan. Both the Storm Water Management Plan and E&S Control Plans are used in developing the State mandated Storm Water Pollution Prevention Plan (SWPPP). An E&S Control Plan may be required for certain projects not requiring a full Storm Water Management Plan, as outlined in this ordinance or determined necessary by the City Public Works Director.
19. "Exposed Soil Areas" shall mean all areas of the construction site where the vegetation (trees, shrubs, brush, grasses, etc.) or impervious surface has been removed, thus rendering the soil more prone to erosion. This includes topsoil stockpile areas, borrow areas and disposal areas within the construction site. It does not include temporary stockpiles or surcharge areas of clean sand, gravel, concrete or bituminous, which have less stringent protection. Once soil is exposed, it is considered "exposed soil," until it meets the definition of "final stabilization."
20. "Final Stabilization" means that all soil disturbing activities at the site have been

completed, and that a uniform (evenly distributed, e.g., without large bare areas) perennial vegetative cover with a density of seventy (70) percent of the cover, as determined by the City or City representatives for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures have been employed. Simply sowing grass seed is not considered final stabilization. Where agricultural land is involved, such as when pipelines are built on crop or rangeland, final stabilization constitutes returning the land to its preconstruction agricultural use or as required by the West Fargo Storm Water Standards.

21. "Floodway" shall mean the channel of the watercourse and those portions of the adjoining flood plains which are reasonably required to carry and discharge the regional flood determined by the use of the 100-year flood profile and other supporting technical data in the Flood Insurance Study.
22. "Hydric Soils" shall mean soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.
23. "Hydrophytic Vegetation" shall mean Macrophytic (large enough to be observed by the naked eye) plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.
24. "Impervious Area" shall mean a constructed hard surface that either prevents or retards the entry of water into the soil, and causes water to run off the surface in greater quantities and at an increased rate of flow than existed prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas; and concrete, asphalt, or gravel parking lots and roads.
25. "Land Development Activity" shall mean the act of subdivision or platting properties for personal use, adding value or for the purposes of resale. This includes the construction and/or demolition of buildings, structures, roads, parking lots, paved storage areas, and similar facilities.
26. "Land Disturbing Activity" shall mean any land change that may result in soil erosion from water or wind and the movement of sediments into or upon

waters or lands within the City's jurisdiction, including construction, clearing & grubbing, grading, excavating, transporting and filling of land. Within the context of this ordinance, land disturbance activity does not mean:

- (a) Minor land disturbance activities such as home gardens and an individual's home landscaping, repairs, and maintenance work, which will not result in sediments entering the storm water system.
- (b) Additions or modifications to existing single family structures that result in creating under five thousand (5,000) square feet of exposed soil or impervious surface and will not result in sediments entering the storm water system.
- (c) Construction, installation, and maintenance of trees, fences, signs, posts, poles, and electric, telephone, cable television, utility lines or individual service connections to these utilities, which result in creating under five thousand (5,000) square feet of exposed soil or impervious surface and will not result in sediments entering the storm water system.
- (d) Tilling, planting, or harvesting of agricultural, horticultural, or silvicultural (forestry) crops.
- (e) Emergency work to protect life, limb, or property and emergency repairs, unless the land disturbing activity would have otherwise required an approved erosion and sediment control plan, except for the emergency. If such a plan would have been required, then the disturbed land area shall be shaped and stabilized in accordance with the City's requirements as soon as possible.

- 27. "Landowner" shall mean any person holding title to or having a divided or undivided interest in land.
- 28. "Local Detention" shall mean detention intended to serve only the developing area in question and no areas outside of the development boundaries. As such it is under the control of one owner or group of owners. This is also known as on-site detention.
- 29. "Local Drainage System" shall mean the storm drainage system which transports the minor and

major storm water runoff to the major storm water system and serving only the property within the development boundaries, under the control of one owner or group of owners. This is also known as the on-site drainage system.

- 30. "Management Practice" shall mean a practice or combination of practices to control erosion and water quality degradation.
- 31. "National Pollution Discharge Elimination System (NPDES) Permit" shall mean any permit or requirement enforced pursuant to the Clean Water Act as amended for the purposes of regulating Storm Water discharge.
- 32. "Natural Water" shall mean a river, stream, pond, channel or ditch.
- 33. "Noncompliance Fee" shall mean the administrative penalty, or fee, which may be assessed to a Permittee, Land Owner, Developer or their Contractor(s) for noncompliance with the provisions and/or conditions of an approved storm water plan and/or permit or the violation of any other provisions contained in this storm water ordinance.
- 34. "On-site Detention" a.k.a Local Detention System.
- 35. "On-site Drainage System" a.k.a Local Drainage System.
- 36. "Outlet" shall mean any discharge point, including storm sewers, into a watercourse, pond, ditch, lake or other body of surface or groundwater.
- 37. "Owner or Occupant" shall mean any person owning or using a lot, parcel of land, or premises connected to and discharging Storm Water into the storm water system of the City, and who pays for and is legally responsible for the payment of storm water rates or charges made against the lot, parcel of land, building or premises, if connected to the Storm Water system or who would pay or be legally responsible for such payment.
- 38. "Permanent Cover" means "final stabilization." Examples include grass, gravel, asphalt, and concrete. See also the definition of "final stabilization."
- 39. "Permanent Development" shall mean any buildings, structures, landscaping and related features constructed as part of a development project

approved for construction or constructed prior to the passage of this ordinance.

40. "Permanent Facilities" shall mean those features of a storm water management plan which are part of any natural or constructed storm water system that requires periodic maintenance to retain their operational capabilities. This includes but is not limited to storm sewers, infiltration areas, detention areas, channels, streets, etc.
41. "Permit" shall mean within the context of this rule a "permit" is a written warrant or license granted for construction, subdivision approval, or to allow land disturbing activities.
42. "Permittee" shall mean any person who applies for and receives approval of storm water plan and/or permit from the City.
43. "Person" shall mean any developer, individual, firm, corporation, partnership, franchise, association, owner, occupant of property, or agency, either public or private.
44. "Prohibited Discharge" shall mean a non-storm water discharge into the storm water system or a natural water, including but not limited to;
 - (a) Debris or other materials such as grass clippings, vegetative materials, tree branches, earth fill, rocks, concrete chunks, metal, other demolition or construction materials, or structures.
 - (b) The disposal or misuse of chemicals or any other materials that would degrade the quality of waters within the system, including, but not limited to chemicals (fertilizers, herbicides, pesticides, etc.) or petroleum based products (gasoline, oil, fuels, solvents, paints, etc.).
 - (c) Erosion and sediment originating from a property and deposited onto City streets, private properties or into the storm water conveyance system, including those areas not specifically covered under an approved Storm Water Management Plan or Storm Water Permit.
 - (d) Failure to remove sediments transported or tracked onto City streets by vehicles or construction traffic immediately after it is deposited on the street.

(e) For the purposes of this ordinance, Prohibited Discharges do not include the following, unless information is available to indicate otherwise:

- Water line flushing
- Landscape irrigation
- Diverted stream flows
- Rising ground water
- Uncontaminated ground water infiltration
- Uncontaminated pumped ground water
- Discharges from potable water sources
- Foundation drains
- Air conditioning condensate
- Irrigation water
- Springs
- Water from crawl space pumps
- Footing drains
- Lawn watering
- Individual residential car washing
- Flows from riparian habitats and wetlands
- De-chlorinated swimming pool discharges
- Street wash water

45. "Public Storm Sewer" shall mean a storm sewer located entirely within publicly owned land or easements.
46. "Regional Detention" shall mean detention facilities provided to serve an area outside the development boundaries. A regional detention site generally receives runoff from multiple storm water sources and serves an area of approximately one quarter section.
47. "Regional Flood" a.k.a. Base Flood or 100-year flood.
48. "Retention Facility" shall mean a natural or manmade structure that provides for the storage of all or a portion of storm water runoff, which includes a permanent pool of water.
49. "Runoff" shall mean the rainfall, snowmelt, dewatering, or irrigation water flowing over the ground surface and into open channels, underground storm sewers, and detention or retention ponds.
50. "Sediment" shall mean solid material or organic material that, in suspension, is being transported or has been moved by air, water, gravity, or ice, and deposited at another location.

51. "Sediment Control" shall mean the methods employed to prevent sediment from leaving the development site. Examples of sediment control practices include, but are not limited to silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins.
52. "Significant Redevelopment" shall mean alterations of a property that changes the "footprint" of a site or building in such a way that results in the disturbance of over one (1) acre of land. This term is not intended to include activities, which would not be expected to cause adverse storm water quality impacts and offer no new opportunity for storm water controls, such as exterior remodeling.
53. "Site" shall mean the entire area included in the legal description of the parcel or other land division on which the land development or land disturbing activity is proposed in the storm water plan or permit application.
54. "Stabilize" shall mean to make the site steadfast or firm, minimizing soil movement by mulching and seeding, sodding, landscaping, placing concrete, gravel, or other measures.
55. "Stabilized" shall mean the exposed ground surface after it has been covered by sod, erosion control blanket, riprap, pavement or other material that prevents erosion. Simply sowing grass seed is not considered stabilization. Ground surfaces may be temporarily or permanently stabilized (also see Final Stabilization).
56. "State" shall mean the State of North Dakota.
57. "Storm Sewer" shall mean a pipe or conduit for carrying storm waters, surface runoff, and drainage, excluding sewage and industrial wastes.
58. "Storm Water" means precipitation runoff, storm water runoff, snow melt runoff, and any other surface runoff and drainage. Storm water does not include construction site dewatering.
59. "Storm Water Detention" shall mean temporary storage of storm water runoff in ponds, parking lots, depressed grassy areas, rooftops, buried underground tanks, etc., for future or controlled release. Used to delay and attenuate flow.

60. "Storm Water Management" shall mean the planned set of public policies and activities undertaken to regulate runoff and reduce erosion, and maintain or improve water quality under various specified conditions within various portions of the drainage system. It may establish criteria for controlling peak flows and/or runoff volumes, for runoff detention and retention, or for pollution control, and may specify criteria for the relative elevations among various elements of the drainage system. Storm water management is primarily concerned with limiting future flood damages and environmental impacts due to development, whereas flood control aims at reducing the extent of flooding that occurs under current conditions.
61. "Storm Water Management Criteria" shall mean specific guidance to carry out drainage and storm water management policies. An example might be the specification of local design hydrology and use of the design storm.
62. "Storm Water Management Permit" shall mean a permit issued by the City in accordance with Title 9, Chapter 4. Permits are generally issued after the approval and acceptance of the Storm Water Management Plan. A permit must be acquired prior to initiating land development, land disturbing, or other activities which result in an increase in storm water quantities, degradation of storm water quality, or restriction of flow in any storm sewer system, open ditch or natural channel, storm water easement, water body or wetland outlet within the City's jurisdiction.
63. "Storm Water Management Plan" shall mean a document containing the requirements identified by the City in Section 9-0402, that when implemented will provide solutions to storm water management problems that may occur as a result of the proposed development or land disturbing activity. A Storm Water Management Permit is not required as part of, but may be included in a Storm Water Management Plan. The plan that a designer formulates to manage urban storm water runoff for a particular project or drainage area. It typically addresses such subjects as characterization of the existing and future site development, land use, and grading plan, peak rates of runoff, flow duration, runoff volumes for various return frequencies, locations, criteria and sizes of detention or retention ponds and conveyances; runoff control features; land parcels, easement locations, opinions of probable costs, measures to enhance runoff quality, salient

regulations, and how the plan addresses them, and consistency with secondary objectives such as public recreation, aesthetics, public safety, and groundwater recharge. It is may be submitted to regulatory officials for their review for adoption.

64. "Storm Water Management System" shall mean physical facilities that collect, store, convey, and treat storm water runoff in urban areas. These facilities normally include detention and retention facilities, streets, storm sewers, inlets, open channels, and special structures, such as inlets, manholes, and energy dissipaters.
65. "Storm Water Pollution Prevention Plan (SWPPP)" shall mean a joint storm water and erosion and sediment control plan that is written as a prerequisite to obtaining a NPDES Storm Water Permit for Construction Activity, that when implemented will decrease soil erosion on a parcel of land and off-site non-point pollution. It involves both temporary and permanent controls. The SWPPP, which draws its information from a Storm Water Management Plan and is typically condensed, must be incorporated into the construction grading plans for the project.
66. "Storm Water Retention" shall mean storage designed to eliminate or reduce the frequency of subsequent surface discharge. Wet ponds are the most common type of retention storage (though wet ponds may also be used for detention storage).
67. "Structure" shall mean anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.
68. "Subdivision" shall mean any tract of land divided into building lots for private, public, commercial, industrial, etc. development for the purpose of sale, rent, or lease, including planned unit development.
69. "System Charge or Assessment" shall mean a charge for connecting an outlet to a regional storm water management facility, typically a pond. The charge is normally assessed to recover the proportional cost of constructing a regional pond or storm water treatment facility.
70. "Temporary Protection" shall mean a short-term methods employed to prevent erosion. Examples of

such protection are straw, mulch, erosion control blankets, wood chips, and erosion netting.

71. "Undeveloped Land" shall mean land that in its current state has not been impacted by significant land disturbance activities, annexed into the City or subdivided into multiple ownership lots and is typically zoned agricultural.
72. "Urban Area" shall mean land associated with, or part of, a defined city or town. This title of the City Code applies to urban or urbanizing, rather than rural areas.
73. "User" shall mean any person who discharges, causes, or permits the discharge of storm water into the City's Storm Water management system.
74. "Violation" shall mean the willful or negligent act of noncompliance with the conditions attached to an approved storm water plan and/or permit, or any other provisions contained in this ordinance, subject to enforcement and penalty or noncompliance fees.
75. "Waters of the State" shall mean all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.
76. "Watercourse" shall mean the natural path for the flow of water where there is sufficient natural and accustomed runoff to form and maintain a distinct and defined channel or an open channel facility that has been constructed for such purpose. This shall include any easements obtained for the purposes of runoff conveyance.
77. "Wet Pond a.k.a. Wet Detention Facility" shall mean a Retention Facility which includes a permanent pool of water used for the purposes of providing for the treatment of storm water runoff.
78. "Wetlands" shall mean lands transitional between terrestrial and aquatic systems (excluding drainage ditch bottoms) where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

- a. A predominance of hydric soils;
- b. Are inundated or saturated by the surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- c. Under normal circumstances support the prevalence of such vegetation.

C. Scope.

- 1. Prohibited Discharges. It shall be considered an offense for any person to cause or allow a Prohibited Discharge into Waters of the State, including the City storm water system, or any natural water.
- 2. Land Disturbing Activity Requiring A Storm Water Management Plan. Any person, firm, sole proprietorship, partnership, corporation, state agency, or political subdivision proposing subdivision or plat approval, a building permit or any land disturbance activity within the City must submit a Storm Water Management Plan and/or a Storm Water Management Permit application to the City Public Works Director unless a waiver is provided in accordance with this Section.

No subdivision or plat approval shall be issued until a Storm Water Management Plan or a waiver of the approval requirements has been obtained in strict conformance with the provisions of this chapter. No building permit, shall be issued until approval of a Storm Water Management Permit or a waiver of the permit requirements has been obtained in strict conformance with the provisions of this chapter. No land shall be disturbed until the permit is approved by the City and conforms to the standards set forth herein.

A Storm Water Management Plan may also be required in some situations as determined by the City Public Works Director, [i.e., development within an existing subdivision with documented flooding problems associated with storm water runoff, or development occurring on a large lot within a subdivision where a Storm Water Management Plan was previously developed].

3. Land disturbing activity involving the construction of a single-family or two-family dwelling. Construction of single family or two family dwellings must comply with in place BMPs and any existing permitted SWPPP for the subdivision, including NPDES/SDS Permit requirements and Subdivision Registration. A Storm Water Management Permit and compliance with the Storm Water Standards is also required.
4. Installation and repair of utility service lines.
 - a. At project sites that require permit coverage where a utility contractor is not the site owner or operator, each utility contractor must comply with the provisions of the storm water pollution prevention plan (SWPPP) for the project their construction activities will impact. Each utility contractor must ensure that their activities do not render ineffective, the erosion prevention and sediment control best management practices (BMPs) for the site. Should a utility contractor damage or render ineffective any BMPs for the site, the utility contractor must repair or replace such BMPs immediately.
 - b. At project sites where a utility contractor is the site owner or operator, and the utility company disturbs one or more acres of soil for the purpose of installation of utility service lines, including but not limited to residential electric, gas, telephone and cable lines, the utility company must apply for permit coverage from the City and state prior to commencement of construction.
 - c. Utility contractors working in a street right-of-way to repair existing or install new utilities and disturbing less than one acre shall obtain a Storm Water Management permit and an Excavation permit before commencing work. The utility contractor is required to provide appropriate inlet protection and sediment control during the course of the work so as to ensure the storm sewer system is protected from pollution. The utility contractor is also required to provide street sweeping as necessary to insure that sediments resulting from their activity do not enter the storm water. All disturbed vegetation shall be replaced with seed or sod within seven (7) days of completion of utility installation on the site. The City will provide guidance

regarding acceptable temporary protection BMPs for inlets and methods to stabilize the exposed soil areas until they meet the definition of final stabilization. Any failure shall result in administrative penalties and revocation of excavation or building permits.

5. Waivers. The City Public Works Director may waive any requirement of this chapter upon making a finding that compliance with the requirement and the waiver of such requirement is not contrary to the objectives in Section 9-0401. The City Public Works Director may require as a condition of the waiver, such dedication or construction, or agreement to dedicate or construct, as may be necessary to adequately meet the said standards and requirements.

- D. Management of Site Vegetation. Any Landowner shall provide for the installation and maintenance of vegetation on their property in accordance with the following criteria, regardless as to whether or not a Storm Water Management Plan, Storm Water Management Permit has been approved or is necessary under this Chapter:

1. Use of Impervious Surfaces. No person shall apply items included in the definition of "Prohibited Discharge" on impervious surfaces or within storm water drainage systems with impervious liners or conduits.
2. Unimproved Land Areas. Except for driveways, sidewalks, patios, areas occupied by structures, landscaped areas, or areas that have been otherwise improved, all areas shall be covered by plants or vegetative growth.
3. Use of Pervious Surfaces. No person shall deposit grass clippings, leaves, or other vegetative materials, with the exception of normal mowing or weed control, within natural or manmade Watercourses, Wetlands, or within Wetland Buffer areas. No person shall deposit items included in the definition of "Prohibited Discharge" except as noted above.

- E. Penalties for Noncompliance

1. Failure to comply with this section of the Chapter shall constitute a violation and subject the Landowner to the enforcement provisions, penalties and noncompliance fees outlined in 9-0406.

9-0402. STORM WATER MANAGEMENT PLAN - APPLICATION AND REVIEW.

- A. Application. A written Storm Water Management Plan Application shall be filed with the City Public Works Director as required by this Chapter. The application shall include a statement indicating the grounds upon which the approval is requested, that the proposed use is permitted in the underlying zoning district, and adequate evidence showing the proposed use will conform to the standards set forth in this chapter and the City per the West Fargo Storm Water Standards. Prior to applying for approval of a Storm Water Management Plan, it is recommended that the applicant have the Storm Water Management Plan reviewed by any affected public agencies. While it is not necessary it is desirable in some cases to combine the Storm Water Management Plan and Storm Water Permit submittals in a single application.

Two sets of legible copies of the drawings and required information shall be submitted to the City Public Works Director and shall be accompanied by a receipt from the City to document the payment of all required fees for processing and approval as set forth in Section 9-0402.B. Plans shall be prepared to a scale appropriate to the site of the project and suitable for performing the review.

At a minimum, the Storm Water Management Plan shall contain the information outlined in the Standards. A written Storm Water Management Report discussing the pre and post development hydrologic and hydraulic analysis, erosion and sedimentation control during and after construction, protective measures for proposed and existing structures, timelines for implementation and water quality concerns shall also be provided. The contents of this report shall be in accordance with the recommended format in the Standards. For additional information refer to Section 9-0403.

- B. Application Fee. A processing and approval fee adopted by the City Commission shall accompany all applications for Storm Water Management Plan approval.
- C. Process. A Storm Water Management Plan meeting the requirements of this Section shall be submitted to the City Public Works Director for review and to determine its compliance with the standards as outlined in Section 9-0403. The City Public Works Director shall approve, approve with conditions, or deny the Storm Water Management Plan. If a particular storm water management plan involves a complex application or has the potential for significant controversy, the City Public Works Director may bring the proposed Storm Water Management Plan before the City Commission for consideration and

public comment. Prior to initiating construction as outlined in the Storm Water Management Plan, the applicant must also obtain a Storm Water Management Permit. Additional processing and approval fees may be considered for more than one resubmittal.

- D. Duration. Approval of any plan submitted under the provisions of this Chapter shall expire one year after the date of approval unless construction has commenced in accordance with the plan. However, if prior to the expiration of approval, the applicant makes a written request to the City Public Works Director for an extension of time to commence construction setting forth the reasons for the requested extension, the City Public Works Director may grant one extension of not greater than one year. The City Public Works Director shall acknowledge receipt of any request for an extension within fifteen (15) days. The City Public Works Director shall make a decision on the extension within thirty (30) days of receipt. Any plan may be revised following the same procedure for an original approval. Provided, the City Public Works Director may waive all or part of the application fee if the revision is minor. Any denied or expired application may be resubmitted with additional information addressing the concerns contained within the denial or the reason why the original plan was allowed to expire. The resubmitted application shall be subject to all applicable fees and review time lines as if it were a new application.
- E. Conditions. A Storm Water Management Plan may be approved subject to compliance with conditions reasonable and necessary to insure that the requirements contained in this chapter are met. Such conditions may, among other matters, limit the size, kind or character of the proposed development, require the construction of structures, drainage facilities, storage basins and other facilities, require replacement of vegetation, establish required monitoring procedures, stage the work over time, require alteration of the site design to insure proper buffering, require the acquisition or dedication of certain lands or easements, and require the conveyance to the City of West Fargo or other public entity of certain lands or interests therein for storm water system facilities. The City Public Works Director may specify special requirements or conditions for specific major or minor watersheds within the City and its extraterritorial jurisdiction. The nature of these requirements will be subject to the unique environmental and natural resource environment of each subwatershed. Approval of a plan shall bind the applicant to perform and comply with all the requirements and conditions of the plan prior to commencing or concurrent with any land disturbing activities.

9-0403. STORM WATER MANAGEMENT PLAN - APPROVAL STANDARDS.

- A. General. This section describes the approval standards used to evaluate a proposed Storm Water Management Plan. The City Public Works Director shall not approve a Storm Water Management Plan, which fails to meet these standards. Other applicable standards, such as state and federal standards, shall also apply. If the standards of different agencies conflict, the more restrictive standards shall apply.

It shall be the Applicant's responsibility to obtain any required permits from other governmental agencies having any jurisdictional authority over the work to be performed. The City may choose to obtain some of the required permits. The Applicant will be notified which permits are to be obtained by the City.

- B. Storm Water Standards. The Storm Water Standards, contains the principal standards and design criteria for developing an effective and acceptable Storm Water Management Plan. The Standards contain an overview of the City's Storm Water Management Policy and design objectives as well as a detailed discussion of the required contents for Storm Water Management Plans submitted to the City Public Works Director for approval. The Standards contain detailed criteria for hydrologic evaluations, the design of storm water management system facility components, water quality protection standards, instructions for the development of an erosion and sedimentation control plan, and requirements for easements and right-of-way. The Standards also contain a discussion of operation and maintenance requirements, standard forms to be used, and standard construction details approved by the City.
- C. Models/Methodologies/Computations. Other than those outlined in the Standards, any hydrologic models and/or design methodologies used to determine runoff conditions and to analyze storm water management structures and facilities, shall be approved in advance by the City Public Works Director. All Storm Water Management Plans, drawings, specifications, and computations for storm water management facilities submitted for review shall contain a validated seal and shall be signed by a Professional Engineer registered in the State of North Dakota. This requirement will be met as part of a properly completed Storm Water Management Plan Report, as described in the Standards.
- D. Storm Water Management Criteria for Permanent Facilities. Storm water control facilities included as part of the final design for a Permanent Development shall be

addressed in the Storm Water Management Plan and shall meet the following criteria:

1. Pre Versus Post Hydrological Response of Site. An applicant shall install or construct, on or for the proposed land disturbing activity or development activity, all storm water management facilities necessary to manage runoff such that increases in flow under the design conditions will not occur that could exceed the capacity of the Outlet, or the Storm Water Management System, into which the site discharges or that would cause the Storm Water Management System to be overloaded or accelerate channel erosion as a result of the proposed land disturbing activity or development activity. Under no circumstances shall the 2, 10, or 100-year developed peak flow exceed the 2, 10, or 100-year existing peak flow without prior written approval by the City Public Works Director. For Regional Detention or Storm Water Management System, the City Public Works Director shall recommend a proposed System Charge or Assessment to be approved by the City Commission based upon an approved Storm Water Management Plan and an analysis of required drainage systems, projected costs and flood protection benefits provided to those properties directly or indirectly impacted by the Regional Detention or Storm Water Management System. Any design shall follow the criteria set forth in the Standards.
2. Natural Features of the Site. The applicant shall give consideration to reducing the need for Storm Water Management System facilities by incorporating the use of natural topography and land cover such as wetlands, ponds, natural swales and depressions as they exist before development to the degree that they can accommodate the additional water flow without compromising the integrity or quality of these natural features.
3. Storm Water Management Strategies. The following Storm Water Management practices shall be investigated when developing a Storm Water Management Plan:
 - (a) Natural infiltration of precipitation and runoff on-site, if suitable soil profiles can be created during site grading. The purpose of this strategy is to encourage the development of a Storm Water Management Plan that encourages natural infiltration. This includes providing as much natural or vegetated area on the site as possible,

minimizing impervious surfaces, and directing runoff to vegetated areas rather than onto adjoining streets, storm sewers and ditches;

- (b) Flow attenuation by use of open vegetated swales and natural depressions;
- (c) Storm Water Detention facilities; and
- (d) Storm Water Retention facilities (on a case by case basis).
- (e) Other facilities requested by the City Public Works Director.

A combination of successive practices may be used to achieve the applicable minimum control requirements specified. Justification shall be provided by the applicant for the method selected.

4. Adequacy of Outlets. The adequacy of any Outlet used as a discharge point for proposed Storm Water Management System must be assessed and documented to the satisfaction of the City Public Works Director. To the extent practicable, hydraulic capacities of downstream natural channels, storm sewer systems, or streets shall be evaluated to determine if they have sufficient conveyance capacity to receive and accommodate post-development runoff discharges and volumes without causing increased property damages or any increase in the established base flood elevation. If a flood plain or floodway has not been established by the Federal Emergency Management Agency, the applicant shall provide a documented analysis and estimate of the base flood elevation as certified by a Professional Engineer registered in the State of North Dakota. In addition, projected velocities in downstream natural or manmade channels shall not exceed that which is reasonably anticipated to cause erosion unless protective measures acceptable to the City Public Works Director are approved and installed as part of the Storm Water Management Plan. The assessment of Outlet adequacy shall be included in the Storm Water Management Plan.
5. Storm Water Detention/Retention Facilities. Storm Water Detention or Retention facilities proposed to be constructed in the Storm Water Management Plan shall be designed according to the most current technology as reflected in the Standards.

- E. Operation, Maintenance and Inspection. All Storm Water Management Systems shall be designed to minimize the need for maintenance, to provide easy vehicle and personnel access for maintenance purposes, and to be structurally sound (per the Standards). All Storm Water Management Systems shall have a plan of operation and maintenance that assures continued effective removal of pollutants carried in Storm Water Runoff. The City Public Works Director may inspect all public and private Storm Water Management Systems at any time. Inspection records will be kept on file at the City Public Works Director's Office. It shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the Storm Water Management System for inspection and maintenance purposes. The City Public Works Director shall retain enforcement powers for assuring adequate operation and maintenance activities through permit conditions, penalties, noncompliance orders and fees.

The Public Works Director may inspect all public and private storm water management systems at any time. Inspection records will be kept on file at the Public Works office. It shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the storm water management system for inspection and maintenance purposes for the city.

- F. Easements. Easements may be required as conditions to the issuance of a Storm Water Management Plan and/or Permit approval. If a Storm Water Management Plan involves directing some or all of the site's runoff to a drainage easement, the applicant or his designated representative shall obtain from the property owners any necessary easements or other property interests concerning the flowing of such water.
- G. Plan Applicability. A Storm Water Management Plan approval issued under this chapter runs with the land and is a condition of plat or development approval. Any Landowner or subsequent Landowner of any parcel within the plat or development area must comply with the plan or any approval, condition, revision or modification of the Plan. Failure to comply with this Plan shall constitute a violation and subject the Permittee, Developer, and/or Landowner to the enforcement provisions, penalties and noncompliance fees.
- H. Plan Amendment. Storm Water Management Plans may be amended only by a written request submitted to the City Public Works Director. This request shall contain the reason for the change and documentation related to any additional change in projected impacts, which may result

from amendment approval. Amendment requests submitted prior to final approval of a plan application shall be considered part of the original submittal. Amendment requests filed after Plan approval shall be considered following the same procedures as if it were a new application and subject to all applicable fees and review periods. Provided, the City Public Works Director may waive all or part of the fees if the amendment is minor.

- I. Record Drawings. The owner shall provide the Public Works Director, in writing, any changes or material modifications to the original permitted design in the form of as-built, or record, drawings. The record drawings shall contain the final configuration for all improvements as constructed. A professional engineer registered in the state shall certify the record drawings. If no significant or material changes occurred between the approved plan and final construction, the record drawings need not be submitted to the Public Works Director. The owner, however, is responsible to retain copies of said drawings and provide them to the Public Works Director upon request. Failure to provide these drawings upon written request constitutes a violation of this chapter.

9-0404. STORM WATER MANGEMENT PERMITS.

- A. Storm Water Management Permits. It is unlawful to initiate any land development activity, land disturbing activity, or other activities which may result in an increase in storm water quantities, degradation of storm water quality, or restriction of flow in any storm sewer system, open ditch or natural channel, storm water easement, water body, or wetland outlet within the jurisdiction of the City, without having first complied with the terms of this chapter. Other activities include those outlined in Section 9-0401.C.

1. Permit Application for Areas Greater than 5000 Square Feet of Land Disturbance. All persons subject to meeting the requirements and needing to obtain a Storm Water Management Permit shall complete and file with the City Public Works Director an application in the form prescribed by the City Public Works Director and accompanied by a fee established by the City Commission. The permit application may need to be accompanied by a Storm Water Management Plan as prescribed under Section 9-0402 of this chapter, if such a plan has not been previously approved with separate application fee. Permit applications may be denied if the applicant is not in compliance on another Storm Water Management permit currently in effect.

2. Permit Application for Areas Less than 5000 Square Feet of Land Disturbance. A Storm Water Management Permit may be issued from the City Public Works Director for projects disturbing under 5,000 square feet and that do not require a detailed engineering assessment for preliminary site work, or for a project site that is located within a previously approved Storm Water Management Plan development area. The Storm Water Management permit does not preclude the requirements for a Storm Water Management Plan. A Storm Water Management permit application does not require certification by a Professional Engineer registered in the State of North Dakota, but will only be issued at the discretion of the City Public Works Director. Commencing earthwork on a project prior to plan or permit approval is considered a violation of this chapter. There will be an application fee for this type of permit.
3. Permit Delays/Revocation. The City Public Works Director may withhold granting approval of a Storm Water Management Permit or revoke an existing permit until all issues associated with the site are resolved to the satisfaction of the City Public Works Director. Permits may be conditioned with delays such that work cannot begin until a specified date or until after the site is inspected.
4. Permit Conditions. Permits are issued subject to all provisions of this chapter and all other applicable regulations, user charges and fees established by the City Commission. Permits may contain, but are not limited to, any of the following conditions:
 - (a) A System Charge or Assessment for a Storm Water Outlet utilizing a regional Storm Water Management System in accordance with a cost determined by the City Public Works Director and approved by the City Commission for said Outlet;
 - (b) Limits on the maximum rate of allowable storm water discharge;
 - (c) Requirements for water quality of storm water discharge;
 - (d) Requirements for the installation, operation and maintenance of storm water facilities including detention/retention or other treatment facilities;

- (e) Requirements for erosion and sediment control, including measures to be implemented and other procedures necessary to protect the storm water system;
 - (f) Compliance schedule;
 - (g) Requirements for notification to and acceptance by the City Public Works Director of any land disturbing activities which have the potential for increasing the rate of storm water discharge resulting in degradation of storm water quality; and
 - (h) Easements as outlined in Section 9-0403.F.
 - (i) Other conditions as deemed appropriate by the City Public Works Director to insure compliance with this chapter.
5. Permit Duration. Permits must be issued for a time period specified by the City Public Works Director. The applicant, if necessary, shall apply for permit renewal a minimum of thirty (30) days prior to the expiration of the applicant's existing permit. The terms and conditions of a permit are subject to modification by the City Public Works Director during the term of the permit as set forth in Section 9-0404.A.6. Any denied or expired application may be resubmitted with additional information addressing the concerns contained within the denial or the reason why the original permit was allowed to expire. The resubmitted application shall be subject to all applicable fees and review time lines as if it were a new application.
6. Permit Modification. The City Public Works Director for just cause upon 30-day notice may modify Storm Water Management Permits. Just cause shall include but not be limited to:
- a. Promulgation of new federal, state or local regulatory requirements;
 - b. Changes in the requirements of this Chapter;
 - c. Changes in the process used by the Permittee or changes in discharge rate, volume, or character; and
 - d. Changes in the design or capability of receiving Storm Water Systems.

The applicant must be informed of any proposed changes in the permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

7. Permit Amendments. Storm Water Permits may be amended (by applicant) only by a written request submitted by the Permittee to the City Public Works Director. This request shall contain the reason for the change and documentation related to any additional impacts, which may result from amendment approval. Amendment requests submitted prior to issuance of a Storm Water Permit shall be considered part of the original submittal. Amendment requests filed after permit approval shall be considered and reviewed under the same procedures and guidelines used for the Storm Water Permit Applications under this Section. Depending on the extent of the amendment, the City Public Works Director may waive any additional fees for a permit amendment review.
8. Permit Transfer. A permit runs with the property it covers, until the permitted activities are completed, and is transferable to new Landowners in its entirety or by parcel, with each parcel being subject to the permit and any conditions, which apply to that parcel. Land transfers must be reported to the City Public Works Director within seven (7) days of the transfer. This section refers to City issued permits and does not release the applicant or owner from transfer requirements of a NPDES/SDS permit including but not limited to permit transfers or subdivision registration.
9. Monitoring Facilities. The City Public Works Director may require the Applicant to provide and operate at the applicant's expense a monitoring facility to allow inspection, sampling, and flow measurements of each Storm Water System component. Where at all possible, the monitoring facility shall be located on the Applicant's property as opposed to being located on public rights-of-way. Ample room must be allowed for accurate flow measuring and sampling and the facility shall be kept in a safe and proper operating condition.
10. Inspection. The City Public Works Director may inspect the Storm Water Management System of any Permittee to determine compliance with the requirements of this chapter. The applicant shall promptly allow the City and their authorized

representatives, upon presentation of credentials to:

- a. Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations, inspections or surveys.
- b. Bring such equipment upon the permitted site as is necessary to conduct such inspections, surveys and investigations.
- c. Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of this permitted site.
- d. Inspect the storm water pollution control measures.
- e. Sample and monitor any items or activities pertaining to storm water pollution control measures.

Any temporary or permanent obstruction to the safe and easy access of such an inspection shall be promptly removed upon the inspector's request. The cost of providing such access shall be born by the Permittee.

11. Inspections of the Storm Water Pollution Prevention Plan's Measures. At a minimum, such inspections shall be done weekly by the Permittee (general contractor, developer or the developer's designated representative), and within twenty-four (24) hours after every storm or snow melt event large enough to result in runoff from the site (approximately 0.5 inches or more in twenty-four (24) hours, as determined by Public Works). At a minimum, these inspections shall be done during active construction.

- B. Construction Plans and Specifications. The plans and specifications prepared for the construction of the Storm Water Management System must be:

1. Consistent with the Storm Water Management Plan approved by the City Public Works Director, including any special provisions or conditions.
2. In conformance with the requirements of the City of West Fargo's construction standards, Storm Water Standards and any other necessary permits required by the Public Works Director.

3. Sealed and signed by a Professional Engineer registered in the State of North Dakota.
4. Submitted to the City Public Works Director for approval.
5. Approved by the City Public Works Director **PRIOR TO** commencing construction.

The erosion/sediment control plans, in a format acceptable to the City Public Works Director, shall contain a drawing or drawings delineating the features incorporated into the Storm Water Pollution Prevention Plan (SWPPP) including details of perimeter protection, construction phasing, storm drain inlet protection, erosion control measures, temporary and final stabilization measures, including all BMP's. In addition the construction specifications shall contain technical provisions describing erosion, sedimentation, and water control measures to be utilized during and after construction as well as to define the entities responsible for the installation and maintenance of the BMP's. The project SWPPP must be incorporated into the construction specification documents.

C. Construction Activities. Construction operations must at a minimum comply with any applicable federal or state permit and SWPPP in addition to the following Best Management Practices:

1. Site Dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro-cyclones, soil concentrators or other appropriate controls as deemed necessary. Water may not be discharged in a manner that causes erosion, sedimentation, or flooding on the site, on downstream properties, in the receiving channels, or in any wetland.
2. Waste and Material Disposal. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, petroleum based products, paints, toxic materials, or other hazardous materials) shall be properly disposed of off-site and shall not be allowed to be carried by Runoff into a receiving channel, storm sewer system, or Wetland.
3. Tracking Management. Each site shall have roads, access drives and parking areas of sufficient width, length and surfacing to minimize sediment from being tracked onto public or private roadways. Any material deposited by vehicles or other

construction equipment onto a public or private road shall be removed immediately (not by flushing).

4. Water Quality Protection. The construction contractor, including the general contractor and all subcontractors, shall be required to control oil and fuel spills and chemical discharges to prevent such spills or discharges from entering any watercourse, sump, sewer system, water body, or wetland.
5. Site Erosion and Sedimentation Control. Construction operations must include erosion and sedimentation control measures meeting accepted design criteria, standards and specifications contained in the Storm Water Standards or other standards determined by the City Public Works Director.

- D. Final Storm Water Management Plan. Upon completion of all required construction activities, the Permittee shall submit to the City Public Works Director a Final Storm Water Management Plan (record plan) to document any changes or material modifications to the original Storm Water Management Plan concept. The Final Storm Water Management Plan shall contain Record Drawings showing the final configuration for all improvements as constructed. A Professional Engineer registered in the State of North Dakota shall certify the Final Storm Water Management Plan and Record Drawings. If no significant or material changes occurred between the approved plan and final construction, the Record Drawings need not be submitted to the City Public Works Director. The Permittee, however, is responsible to retain copies of said drawings and provide them to the City Public Works Director upon request. Failure to provide these drawings upon written request constitutes a violation of this chapter.

9-0405. SUSPENSIONS, REVOCATIONS AND STOP WORK ORDERS.

- A. Storm Water Violations and Reporting. Storm Water Management Plan, Storm Water Management Permit and non-permit related Storm Water violations include, but are not limited to:
 1. Commencing site grading or preparation work without first having obtained an NPDES Storm Water Permit for Construction Activity, Storm Water Management Permit.
 2. Noncompliance with the requirements or conditions attached to an approved SWPPP of an NPDES Storm Water Permit For Construction Activity, Storm Water

Management Plan, Storm Water Management Permit or other standards established by the City Public Works Director, under authority of the City.

3. The causing or allowing of a Prohibited Discharge in the City storm water system, a natural watercourse, storm water easement, stream or river.
4. Failure to remove sediments transported or tracked onto City streets by vehicles or construction traffic immediately after it is deposited on the street.
5. Failure to install and maintain the erosion control measures (BMP's) on a construction site as outlined in the approved Storm Water Management Permit, SWPPP and its amendments or other standards established by the City Public Works Director, under authority of the City Public Works Director.
6. Other violations or issues as noted or described throughout this chapter.

The City Public Works Director shall document the reporting of a violation in writing. Such violations may be obtained via a site inspection or a public complaint followed by a site inspection. At a minimum the complaint file shall contain the name and address of the owner, date, time and nature of the violation as well as other information as deemed necessary to document site conditions, including photos and personal conversation records. In the case of a public complaint the file shall also, if voluntarily provided, contain the name address and phone number of the individual filing the complaint. In addition the complaint file shall contain records documenting subsequent site inspections, compliance actions and a memo outlining the determination of the City Public Works Director and any enforcement action taken and/or any noncompliance fees levied.

- B. Emergency Suspension. The City Public Works Director may for cause order the suspension of a Storm Water Management Plan, Storm Water Management Permit when the City Public Works Director determines that an actual or threatened discharge presents or may present an imminent or substantial danger to the health or welfare of persons downstream, or substantial danger to the environment. If such permits are suspended, all work in the area covered by the permit shall cease immediately. If any person is notified of such suspension and then fails to comply voluntarily with the suspension order, the City shall commence whatever steps are necessary to obtain compliance. The City Public Works Director may reinstate the Storm Water Management Plan, Storm Water Management

Permit upon proof of compliance with all plan or permit conditions. The City Public Works Director may also order the immediate suspension of all work if a person or entity is conducting an activity for which a permit is needed without first obtaining the appropriate permit. The suspension shall remain in effect until the required permit(s) are obtained.

Whenever the City Public Works Director orders the suspension of a plan or permit and/or orders all work to stop pursuant to the emergency provisions of this section, the City Public Works Director shall serve notice on the Landowner and/or Permittee personally, or by registered or certified mail. The Landowner and/or Permittee has the right to an informal hearing before the City Public Works Director upon request made in writing and filed with the City Public Works Director. The informal hearing must be held within five (5) days of the request. Following the hearing, the City Public Works Director may affirm, modify or rescind the order.

Any person dissatisfied with an order the City Public Works Director issued pursuant to this section may request a hearing, pursuant to Section 9-0405.E, by filing a written request for a hearing with the City Public Works Director, within fifteen (15) days of receipt of the order. The hearing must be held within ten (10) days of receipt of the request. A request for a hearing filed pursuant to this section does not stay the order while the hearing is pending.

C. Non-Emergency Revocation of a Permit. A Storm Water Management Plan, Storm Water Management Permit may be revoked following notice. An opportunity for a hearing in accordance with Sections 9-0405.D and 9-0404.E will be provided. The City Public Works Director may revoke a plan or permit for cause, including but not limited to:

1. Violation of any terms or conditions of the applicable plan or permit;
2. False statements on any required reports or applications;
3. Obtaining a plan or permit by misrepresentation or failure to disclose fully all relevant facts; or
4. Any other violation of this chapter or related ordinance.

The City Public Works Director may revoke a Storm Water Management Plan, Storm Water Management Permit and order a temporary work stoppage to bring a project into compliance. Notice of such an order shall be given and

a hearing opportunity provided in accordance with Sections 9-0404.D and 9-0404.E. Under a revoked plan or permit no additional permit approvals (i.e., building, excavation, etc.) shall be issued for any properties within the area included within the plan or permit boundaries until approved by the City Public Works Director. In addition the City may deny new permits (i.e., storm water, building, excavation, etc.) to the Permittee or Landowner in violation for projects in other locations until current permits are brought into compliance

- D. Notification. Whenever the City Public Works Director finds that any person has violated or is violating this chapter, Storm Water Management Plan, Storm Water Management Permit and/or its conditions, or any prohibition, limitation or requirement contained herein, the City Public Works Director shall serve upon such person a written notice stating the nature of the violation. Within seven (7) days of the date of the notice, unless a shorter time frame is set by the City Public Works Director due to the nature of the violation, a plan satisfactory to the Public Works Director for correction thereof must be submitted to the City Public Works Director. If a satisfactory plan is not submitted in a timely manner, or the terms of such plan are not followed, the City Public Works Director may order all work in the affected area to cease until submittal of such a plan and compliance with the plan is happening. If a person disagrees with the determination of the City Public Works Director, that person may, within 15 days of the order of the City Public Works Director, request a hearing as provided in Section 9-0405.E.
- E. Hearing. If a person requests a hearing to contest the order of the City Public Works Director, a notice of hearing must be served on the person appealing the order, specifying the time and place of the hearing to be held regarding the order of the City Public Works Director, and directing the person appealing to show cause why the order of the City Public Works Director should not be upheld. Unless the Public Works Director has suspended the permit or ordered work to stop pursuant to Section 9-0405.B, any order stopping all work shall be stayed until after the hearing. The notice must be served personally or by registered or certified mail at least five (5) days before the hearing. The evidence submitted at the hearing shall be considered by the City Auditor, or his/her designee, who shall then either, uphold, modify or rescind the order of the City Public Works Director. An appeal of the decision may be taken to the District Court according to law. Provided, that if the City Auditor or his/her designee upholds an order

stopping work, such work suspension shall not be stayed as a result of the appeal to the District Court.

- F. Legal Action. The discharge of deposited or eroded materials onto public rights-of-way or public storm sewer systems within the City of West Fargo shall be considered an offense and may result in an order to remove such materials. Removal of such materials shall be at the Landowner's and/or Permittee expense based on the properties from which they originated. The Landowner and/or Permittee shall have twelve (12) hours after receiving the notice to remove these materials. If such materials are not removed, others may remove them under the City Public Works Director's direction and any associated costs shall be the responsibility of the Landowner or Permittee and, if unpaid within 90 days, may be recommended for assessment action by the City Commission against property of the violator.

If any person commences any land disturbing activities which result in increased Storm Water quantity or Storm Water quality degradation into the City's Storm Water Management System contrary to the provisions of this chapter, federal or state requirements or any order of the City Public Works Director, the City Attorney may, commence action for appropriate legal and/or equitable relief including administrative or criminal penalties.

9-0406. VIOLATIONS AND ENFORCEMENT.

- A. Definitions. The following definitions apply to this article:

1. Notice of violation - A notice of violation is a written notice of the violation of an ordinance in this article which identifies the nature of the violation, the section or ordinance allegedly violated and the time of occurrence of the violation, if known.
2. Administrative compliance order - An administrative order is an order issued by the Public Works Director which identifies the nature of the violation, the section or ordinance allegedly violated, the time of occurrence of the violation, if known, the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected and ordering that the alleged violator come into compliance with the section or ordinance allegedly violated. The administrative order may provide a time period within which compliance must occur.

3. Administrative compliance order with fine - An administrative order with fine is an administrative order that also provides that the city will impose a civil fine if compliance does not occur within the time provided in the order.
 4. Order to show cause - An order issued by the Public Works Director issued when there is reason to believe that the violation identified in the administrative order has not ceased or been corrected as required, and directing the alleged violator to appear before the City Commission to show cause why further enforcement measures should not be taken or ordered or fees imposed, or both.
- B. Responsibility for Enforcement. The Public Works Director is authorized to enforce this article.
- C. Violations. All of the following represent violations of this chapter and of law and will be subject to the remedies and penalties provided in this article, the West Fargo Municipal Code and state law, where applicable. The city includes the extraterritorial zoning jurisdiction of the city.
1. Land Disturbing activity without required permit or approval - No person shall initiate within the city any land development activity, land disturbing activity, or other activity resulting in an increase in storm water quantities, degradation of storm water quality, or restriction of flow in any storm sewer system, open ditch or natural channel, storm water easement, water body, or wetland outlet, without having first complied with the terms of this chapter.
 2. Authorities inconsistent with requirements - No person shall engage in land disturbing activities on an owner's land in contravention of the plans set forth in an approved SWPPP, a storm water management permit, any conditions for such plan or permit, any provision of this chapter or any other term, condition, or qualification imposed by the Public Works Director, or other decision-making body, imposed or stated as part of a permit, certificate, or other form of authorization. This section applies to all persons including owners, their contractors and any utility companies or their contractors engaging in land disturbing activities.
 3. Permanent facilities inconsistent with requirements - It is a violation of this article to erect, construct, reconstruct, remodel, alter, maintain,

move, or use any permanent storm water management or control facility in violation or contravention of this chapter or of an approved plan as provided in this chapter.

4. No person shall cause a prohibited discharge within the city.
5. The owner or applicant shall remove sediments transported or tracked from owner's/applicants land onto city streets by vehicles or construction traffic immediately and failure to do so shall be a violation of this chapter.
6. As to construction activities on owner's/applicants land, the owner/applicant shall comply with the requirements of the storm water management permit, and with the following and failure to do so shall be a violation of this chapter:
 - a. Site dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, up flow chambers, hydro-cyclones, soil concentrators, sediment bags or other appropriate controls as approved by the Public Works Director. Water may not be discharged in a manner that causes erosion, sedimentation, or flooding on the site, on downstream properties, in the receiving channels, or in any wetland.
 - b. Waste and material disposal. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, petroleum based products, paints, concrete or concrete wash water, toxic materials, or other hazardous materials) shall be properly disposed of off-site and shall not be allowed to be carried by runoff into a receiving channel, storm sewer system, or wetland.
 - c. Tracking management. The use of clay or other cohesive soils to construct access roads or ramps over curbs or onto paved streets shall not be allowed.
 - d. Water quality protection. The construction contractor, including the general contractor and all subcontractors, shall be required to control oil and fuel spills and chemical discharges to prevent such spills or discharges from entering any watercourse, sump, sewer system, water body, or wetland.

7. One or two dwelling unit building - Construction of a one or two dwelling unit building must comply with in-place BMP's and any existing permitted SWPPP for the subdivision, including NPDES permit requirements and failure to do so shall be a violation of this chapter.
8. Utility service lines - Utility companies or contractors working in a street right-of-way to repair existing or install new utilities that involve land disturbing activities shall obtain an excavation permit from the Public Works Director, in accordance with Chapter 18 of the West Fargo Municipal Code. With respect to utility companies that are working in a street right-of-way and are engaging in land disturbing activities, in addition to the requirements of Chapter 18, including the obligation of obtaining an excavation permit, the excavation permittee shall implement storm water protection measures and utilize construction methods to minimize the potential for sediment or other contaminants to enter the city's storm sewer system. The utility company or contractor shall provide street sweeping as necessary to prevent sediments from their activities from entering the storm sewer system. All sediments or other materials shall be removed from the site immediately after it is deposited. All disturbed vegetation shall be replaced with seed or sod within seven (7) days of completion of utility installation on the site or other appropriate means of erosion and sediment control shall be implemented and maintained until the restoration is complete. All seeded or sodded areas shall be maintained by the utility company or contractor until vegetation is established except in the case of a utility repair for a private residence. For utility repairs to private residence the homeowner shall be responsible for the maintenance of vegetation until it is established. The contractor shall provide the homeowner with a "Sediment and Erosion Control for New Homeowners" fact sheet from the ND State Health Department.
9. Illicit connections - Storm water systems are designed to carry uncontaminated storm water. Legal connection to the city's storm water system includes sump pumps lawfully connected to the storm sewer system under Chapter 9.03 of the Ordinances of West Fargo, and uncontaminated storm water conveyances (such as roof drains). All other connections shall be considered illicit connections and therefore constitute a prohibited discharge and a violation of this chapter.

10. Illicit dumping - The dumping or disposal of debris materials such as grass clippings, vegetative material, tree branches, stumps, earth fill, rocks, concrete chunks, metal, other demolition or construction materials, or structures, any chemicals, or other materials that could degrade the quality of waters within the system by dumping in a manner that allows them to come into contact with storm water is prohibited. It is a violation of this chapter to allow such a discharge to occur.

C. Management of Site Vegetation. All landowners shall provide for the installation and maintenance of vegetation on their property as follows regardless as to whether or not a storm water management permit has been approved or is necessary under this chapter and failure to do so shall be a violation of this chapter. All unimproved areas shall be covered by either plants or vegetative growth or, in the alternative, by other means of storm water protection approved by the Public Works Director. The term unimproved area means all areas other than driveways, sidewalks, patios, areas occupied by structures and landscaped areas.

D. Enforcement Procedures. The following enforcement procedures shall apply to violations of this article:

1. Non-Emergency matters - In the case of violations of this article that do not constitute an emergency, the Public Works Director may:

- a. Issue a notice of violation
- b. Issue an administrative order; or
- c. Issue an administrative order with fine;

All notices and orders shall be issued to the property owner and to any other person who is alleged to be in violation of this article or of the terms of any permit or condition granted and to any applicant for any relevant permit.

2. Emergency matters - In the case of violations of this article that do constitute an emergency situation, the city shall use all remedies, penalties and enforcement powers available under this article without prior notice, but the Public Works Director must send notice simultaneously with beginning enforcement action to the property owner, to any other person who is party to the agreement and to applicants for any relevant permit and must advise persons affected by the action taken that a hearing will be held within seven days from the date of such action. At the hearing, the City Commission will determine whether there were

appropriate grounds for the action taken, and whether the action taken should continue.

3. Administrative compliance orders - procedure - Persons receiving an administrative order or an administrative order with fee shall have 12 hours, or such longer period as the Public Works Director allows, to correct the violation. If the violation is not corrected within the required time-frame, the Public Works Director and city attorney shall use all penalties, remedies and enforcement powers available under this article. Any notice or order issued by the Public Works Director must be given in the manner required by the administrative enforcement ordinance, Article 1-04 of the West Fargo Municipal Code.
4. Administrative compliance order with fee/administrative complaint or citation - procedure - The Public Works Director shall include in the administrative complaint the amount of administrative fee to be paid by the person against whom the citation or complaint is issued. The authorized city employee or representative issuing the administrative citation need not issue an administrative order before issuing an administrative complaint.
5. Order to show cause - hearing - In the event the Public Works Director has issued an administrative order or an administrative order with fee, if the violation is not corrected by timely compliance, the Public Works Director may order any person who causes or allows an unauthorized discharge to show cause before the City Commission why sewer service should not be shut off. A notice shall be served on the offending party, specifying the time and place of a hearing to be held by the City Commission regarding the violation, and directing the offending party to show cause before said board why an order should not be made directing the shut off service. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least 10 days before the hearing in accordance with the provisions of Article 1-04. The hearing before the City Commission shall be held in the same manner, and under the same rules and procedures as provided in Article 1-04.

E. Remedies and Enforcement Powers. The city shall have the following remedies and enforcement powers:

1. Withhold permits - The city may deny or withhold all permits, certificates or other forms of authorization as to any applicant for a permit. Instead of withholding or denying an authorization, the city may grant such authorization subject to the condition that the violation be corrected. This enforcement provision applies regardless of whether the current owner or applicant is responsible for the violation in question. The city may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by a person who owns, developed or otherwise caused an uncorrected violation of a provision of this article or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. This provision applies regardless of whether the property for which the permit or other approval is sought is the property in violation.
2. Revoke permits - A permit may be revoked when the Public Works Director determines that:
 - a. There is departure from the plans, specifications, or conditions as required under terms of a permit or approved plan;
 - b. The plans, specifications, or conditions were obtained by false representation or was issued by mistake; or
 - c. Any of the provisions of this chapter are being violated as to the project under the permit.
3. Revoke plan or other approval - When a violation of this article involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the Public Works Director or City Commission charged with enforcement of the provisions of this article may, upon notice to the applicant and other known parties in interest (including any holders of building or other permits affected) and after a public hearing, revoke the plan or other approval or condition its continuance on strict compliance, the provision of security or such other conditions as the Public Works Director or City Commission may reasonably impose.
4. Injunctive relief - The city may seek an injunction or other equitable relief in court to stop any violation of this article or of a permit,

certificate or other form of authorization granted hereunder.

5. Abatement - The city may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.
6. Restitution - The city may seek an order requiring restitution as a condition to be met by a person before the person's permit is restored, before the person is allowed to lawfully discharge into the sewer system, or before other action may be taken by the person as determined by an appropriate order.
7. Costs of damage - Any person violating any of the provisions of this chapter or who initiates an activity causes a deposit, obstruction, or damage or other impairment to the city's storm water management system is liable to the city for any expense, loss, or damage caused by the violation or the discharge. The city may bill the person violating this chapter the costs of any cleaning, repair or replacement work caused by the violation of storm water discharge, and if unpaid within ninety (90) days may result in assessment of such costs against the violator's property.
8. City attorney's fees and costs - In addition to the fees and penalties provided herein, the city may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by appropriate action against the person found to have violated this chapter or the orders, rules, regulations and permits issued hereunder.
9. Other remedies - The city shall have such other remedies as are and as may be from time to time provided by North Dakota law and municipal codes for the violation of this article or related provisions.
10. Remedies cumulative - The remedies and enforcement powers established in this article are cumulative. The City Commission may hold a single hearing to consider evidence and render decisions on appeals from administrative citations or complaints, orders to show cause or other administrative proceedings involving one or more alleged violators stemming from the same occurrence or series of occurrences.

- F. Enforcement - non-compliance and re-inspection fees. Any person who is found to have violated an order of the Public Works Director made in accordance with this chapter, or who has failed to comply with any provision of this chapter and the orders, rules, regulations and permits issued hereunder, is guilty of an offense. Each day on which a violation occurs or continues to exist shall be deemed a separate and distinct offense. A schedule for noncompliance and re-inspection fees, which may be imposed for violation of this chapter, may be approved by the board of city commissioners.
- G. Other Powers. In addition to the enforcement powers specified in this article, the city may exercise any and all enforcement powers granted to them by North Dakota law.
- H. Continuation. Nothing in this article shall prohibit the continuation of previous enforcement actions undertaken by the city pursuant to previous and valid ordinances and laws.
- I. Power and Authority of Inspectors - Right of Entry. Where it is necessary to make an inspection to enforce the provisions of this code, or where the engineers or inspections officer has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the engineer or inspections officer is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the engineer or inspections officer shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the engineer shall have recourse to the remedies provided by law to secure entry.
- J. Savings Clause - conflict. In the event that any provision, paragraph, word, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and articles shall not be affected and shall continue in full force and effect; all ordinances and parts of ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

TITLE X.

BUSINESS LICENSES AND REGULATIONS

CHAPTERS:

- 10-01. Alcoholic Beverages.
- 10-02. Gambling.
- 10-03. Pawn Brokers.
- 10-03A. Secondhand Goods Dealers.
- 10-04. Sunday Opening - Food Stores.
- 10-05. Lodging Tax.
- 10-06. Tobacco Product Licensing. (Source: Ord. 997, Sec. 1, 2014)
- 10-07. **Reserved for Future Use.** Source: Ord. 1072, Sec. 1 (2017)
- 10-08. **Reserved for Future Use.** Source: Ord. 1103, Sec. 1 (2017)
- 10-09. Dead Animals, Bones, Carcasses, Furs, and Hides.
- 10-10. **Reserved for Future Use.** Source: Ord. 1103, Sec. 2 (2017)
- 10-11. Landing and Takeoff of Aircraft at Unauthorized Airports, Helipads, or Other Unauthorized Locations Prohibited
- 10-12. Door-to-Door Sales and Solicitations. (Source: Ord. 945, Sec. 1, 2013)
- 10-13. Opioid Treatment Programs and Facilities. (Source: Ord. 1027, Sec. 1, 2015)
- 10-14. Live Adult Entertainer License. (Source: Ord. 982, Sec. 1, 2016)
- 10-15. Taxicabs. (Source: Ord. 1053, Sec. 1, 2016)

CHAPTER 10-01

ALCOHOLIC BEVERAGES

(Source: Ord. 621, Sec. 1 [2002]; Ord 862, Sec. 1 [2010]; Ord. 1037, Sec. 1 (2015))

SECTIONS:

- 10-0101. Definitions.
- 10-0102. License Required.
- 10-0103. Licenses - Regulations as to Classes - Fees.
- 10-0104. License - Qualifications.
- 10-0105. Server Training Required.
- 10-0106. Liability Insurance Required of Licensees.
- 10-0107. License Application.
- 10-0108. Investigation of Applicant.
- 10-0109. Issuance, Renewal and Transfer of Licenses.
- 10-0110. RESERVED FOR FUTURE USE.
- 10-0111. License Fees - Disposition of Fees.
- 10-0112. Posting of Licenses.
- 10-0113. Licenses - Termination, Suspension and Revocation.
- 10-0114. Administrative Hearing.
- 10-0115. Administrative Fine, Suspension, or Revocation Regarding Sale of Alcoholic Beverages to Minors.
- 10-0116. Administrative Fine, Suspension, or Revocation Regarding Sale of Alcoholic Beverages to Minors if Licensee has Certified to an Approved Training Program.
- 10-0117. Location of Licensed Alcoholic Beverage Establishments.
- 10-0118. Sale of Alcoholic Beverages in Gas Stations, Grocery Stores, and Convenience Stores.
- 10-0119. Hours of Sale - Prohibition of Sales on Holidays.
- 10-0120. Restrictions on Sale, Service or Dispensing of Alcoholic Beverages.
- 10-0121. Delivery of Alcoholic Beverages.
- 10-0122. Purchase to be from Licensed Wholesaler.
- 10-0123. Licensed Premises - Requirements For.
- 10-0124. Inspection of Licensed Premises to be Allowed.
- 10-0125. Cabaret License.
- 10-0126. Application of Chapter.
- 10-0127. Penalty.
- 10-0128. Severability Clause.
- 10-0129. Special Permits for Sale of Alcoholic Beverages.
- 10-0130. Registration of Beer in Kegs Required Prior to Sale.
- 10-0131. Sunday Opening.
- 10-0132. Public Consumption of Alcoholic Beverages Prohibited.
- 10-0133. Bottle Clubs Prohibited.

- 10-0134. Removal of Wine from Restaurant.
- 10-0135. Sale of Alcoholic Beverages in Exchange of Goods Prohibited.
- 10-0136. Powdered Alcohol Products Prohibited. (Source: Ord. 1041, Sec. 11)

10-0101. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

1. "Agent": A person or entity acting on behalf of the license holder or an employee of the license holder.
2. "Alcoholic Beverages": Any liquid intended for drinking by human beings which contains one-half of one percent or more of alcohol by volume.
3. "Applicant": Person who completes the license application, may or may not be owner or licensee.
4. "Beer": Any malt beverage containing more than one-half of one percent of alcohol by volume.
5. "City": The City of West Fargo.
6. "Club" or "lodge": Any corporation or association organized for civic, fraternal, social, or business purposes, or for the promotion of sports. Said club or lodge shall have at least one hundred (100) members at the time of the license application and have been in existence for 20 years prior to the time of application for the license; if not it must be a local organization which is a subsidiary of and chartered by a national organization which has had a bona fide existence for more than 20 years shall be deemed to be a "lodge" or club. Alcoholic beverages may be sold or served only to members, associate members, and bona fide guests. "Bona fide guests" means any person accompanied by a member of the club or lodge or other person invited by a member of the club or lodge.
7. "Commission": The Board of City Commissioners of the City of West Fargo, North Dakota.
8. "Incompetent": Someone under a guardianship whom has been judged legally incompetent.
9. "Indoors": Within a fully-enclosed building.

10. "Licensed Premises": The premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
11. "Licensee": means the person or entity to whom a license has been issued under the provisions of this chapter.
12. "Liquor": Any alcoholic beverage, except beer.
13. "Obviously intoxicated": shall mean that the person's obvious intoxication be reasonably discernible or evident to a person of ordinary experience."
14. "Off Sale": The sale of alcoholic beverages in original packages for the consumption off or away from the premises where sold. This provision shall not prohibit the licensee from dispensing and the customer from consuming a free sample as defined by the laws of this state.
15. "On Sale": The sale of alcoholic beverages for consumption only on the licensed premises where sold.
16. "Outdoors": Any area outside a fully-enclosed building.
17. "Owner": means the individual or entity that holds title to an establishment.
18. "Package" and "Original Package": Any container or receptacle holding alcoholic beverages, when such container or receptacle is corked or sealed by the manufacturer thereof, and when the cork or seal has not been removed or broken prior to the sale of such package to the purchaser.
19. "Person(s)": Any individual, firm, corporation, association, club, partnership, society, or any other organization.
20. "Powdered Alcohol Product": Any alcohol prepared or sold in a powder form for either direct use or reconstitution in a liquid beverage or food. (Source: Ord. 1041, Sec. 1 [2015])
21. "Recreational Establishment": Any establishment whose building contains games such as billiards, pool, video games, pinball machines or similar devices that take up

at least 25% of the square footage of the building. Bowling alleys are not a recreational establishment.

22. "Resident Manager": Person who operates the establishment on a day-to-day basis. This person must be a legal resident of the United States, at least twenty-one (21) years of age and reside within 75 miles of the city limits of West Fargo.
23. "Sale" and "sell": All manners or means of furnishing of alcoholic beverages, including the selling, exchange, disposition of, and keeping for sale of such alcoholic beverages.
24. "Wholesaler": Any person engaged in the sale and distribution of alcoholic beverages at wholesale to persons holding a retail license for the sale and distribution of alcoholic beverages within the State of North Dakota or in interstate commerce.
25. "Wine": The alcoholic beverage obtained by a fermentation of agricultural products containing natural or added sugar, or such beverage fortified with brandy and containing not more than 24% alcohol by volume.

10-0102. LICENSE REQUIRED. No person, as defined in Section 10-0101 of this chapter, shall sell, dispense, serve, exchange, or keep for sale any alcoholic beverages, as defined in Section 10-0101 of this chapter, without first having obtained a license pursuant to the provisions of this chapter and posting said license in a conspicuous place or premises. This section does not apply to a nonprofit organization that sells an alcoholic beverage as part of a fundraising activity. As used in this subsection, fundraising activity includes an auction, raffle, or other prize contest for which consideration is given. If the alcoholic beverage is sold as part of a fundraising event, the sale may not be for consumption at that event.

10-0103. LICENSES - REGULATIONS AS TO CLASSES - FEES.

1. Licenses authorizing the sale of alcoholic beverages within the City of West Fargo shall be divided into the following classes:
 - (a) Wholesaler's License. The annual license fee for wholesaler's license shall be One Thousand Dollars (\$1,000) per year, payable at the time of application for the license.

- (b) Retail On and Off Premises Liquor License. The annual license fee for retail liquor on and off sale premises license shall be One Thousand Five Hundred Dollars (\$1,500) per year, payable at the time of the application.
- (c) Retail On Premises Liquor License. The annual license fee for retail liquor on-sale premises license shall be One Thousand One Hundred Dollars (\$1,100), payable at the time of application.
- (d) Retail Off Premises Liquor License. The annual license fee for retail liquor off sale premises license shall be One Thousand One Hundred Dollars (\$1,100) per year, payable at the time of application.
- (e) Retail Club or Lodge On Sale Liquor License. The annual license fee for a retail club or lodge on sale liquor license shall be One Thousand Dollars (\$1,000) payable at the time of application.
- (f) Retail On and Off Premises Beer License. The annual license fee for a retail on and off premises beer license shall be Four Hundred Dollars (\$400), payable at the time of the application for the license.
- (g) Retail On Premises Beer License. The annual license fee for a retail on premises beer license shall be Four Hundred Dollars (\$400), payable at the time of the application for the license.
- (h) Retail Off Premises Beer License. The annual license fee for a retail off premises beer license shall be Four Hundred Dollars (\$400), payable at the time of the application for the license.
- (i) Retail Club or Lodge On Sale Beer License. The annual license fee for a retail club or lodge on sale beer license shall be One Hundred Fifty Dollars (\$150) per year, payable at the time of the application for the license.
- (j) Retail On-Premises Wine and Beer License. The annual license fee for a retail on-premise wine and beer license shall be Six Hundred Dollars (\$600), payable at the time of application for the license.
- (k) Sunday license. Requirements for beer and liquor sales on Sundays are set forth in section 10-0131.

2. The licenses for the sale of alcoholic beverages set out above shall be in effect for a period of one year commencing July 1 of each year and terminating June 30 of the following year. If an application is made for a license during the licensing year, the license that is granted shall only be for the unexpired portion of such year ending June 30, at which time an application for renewal of the license must be made. The license fee for the partial year shall be prorated so that it equals one-twelfthth (1/12th) of the licensing fee set out above times the number of months the license will be in effect. The entire license fee for the portion of the year shall be paid at the time of the issuance of the license. Provided, that if a transfer of a license will occur within 60 days after July 1, the current license holder and intended transferee can file a joint application for a new license along with the required annual fee. The current licensee will receive a new license effective July 1, and upon written confirmation within 60 days of July 1, the Auditor shall issue a new license to the transferee without the need of further license fees. A separate license, in accordance with the provisions set forth in 10-0131, is required for beer and liquor sales on Sundays.
3. If an application is for a new liquor license, or a transfer of a license, not a renewal of an existing license, in addition to the annual license fee set forth above, an initial application fee, payable to the City of West Fargo, must accompany the license application fee. The amount of the initial application fee shall be twenty-five percent (25%) of the annual license fee set out above for the license or licenses for which application is being made. Such initial application fee shall not be refunded, whether or not a license is granted by the City, and the initial application fee shall not be prorated, even if the initial application is for a portion of a year. Provided, that if a transfer of a license is to a person who already holds a beer or liquor license in West Fargo, or to an entity whose owner, shareholders, or partners have all had background checks by the West Fargo Police Department, the Auditor may waive the initial application fee.
4. Any license holder which premises includes a restaurant and which allows persons under twenty-one (21) to enter the premises with a request for renewal of a license shall be required to file with the City a statement by a certified public accountant indicating that he or she has examined and tested the books and records of the licensee and that the licensee's gross revenue from the sale of food is equal to or exceeds the gross revenue from the

sale of alcoholic beverages in the dining area. At the option of the licensee, in lieu of a certified public accountants statement, licensee may request from the State Tax Commissioner's Office and furnish to the City Auditor's office a certified copy of licensee's sales tax returns for the most recent 12-month period prior to renewal. Notwithstanding furnishing of such sales tax returns, the City may, in its discretion, require licensee to comply with the requirement that a statement by a certified public accountant be furnished as aforesaid. Any costs incurred in connection with the requirements of this section shall be the sole responsibility of the licensee. The City may also, in its discretion, conduct an independent investigation of the sales ratio of food to alcoholic beverages and for such purpose, the licensee agrees to allow inspection of its business records. In the event that the results of an independent investigation by the City results in a determination that sale of food does not equal or exceed the sale of beverages in the dining area, the licensee shall be required to pay all costs of such investigation, and the licensee will have to suspend persons under the age of twenty-one (21) from entering the establishment.

5. A wholesaler's license may be issued to any person eligible there for under the terms of the laws of the State of North Dakota, or any amendments thereto, who shall be engaged in the business of selling alcoholic beverages to licensed retail dealers or in interstate commerce only, provided, that no license shall be granted to any wholesaler who shall, directly or indirectly own or control, or have any financial interest in the ownership, control or operation of a licensed retail on sale and/or off sale business.

10-0104. LICENSE-QUALIFICATIONS. No retail license for the sale of alcoholic beverages shall be issued to any applicant unless the following requirements are met:

1. State Requirements. The requirements of NDCC Sections 5-02-02(1), (2), (4), (6), and (7) are met.
2. Residence Requirement.
 - (a) If applicant is an individual, the applicant must reside within 75 miles of the city limits of West Fargo.
 - (b) If the applicant is any form of a partnership, a partner or partners owning at least 50 percent of the partnership must reside within 75 miles of the city limits of the City of West Fargo.

- (c) If applicant is any form of a corporation, it must have a Resident Manager who is designated in the license application as the registered agent of the corporation who must reside within 75 miles of the city limits of the City of West Fargo.

If applicant, or Resident Manager, does not have a legal and bona fide residence as required above at the time at which the application is submitted, a license may be granted to such an applicant upon the condition that the applicant satisfies the above residence requirement within three (3) months after the approval of the license. Failure to provide this documentation within the above time line will result in the automatic suspension of the license.

- 3. Age. The applicant, and all partners, and all officers, directors, shareholders holding more than five percent of the outstanding stock of the corporation, and Resident Manager shall be at least twenty-one (21) years of age.
- 4. Fitness. The applicant, its Resident Manager, partners and/or shareholders, must be deemed by the Board of City Commissioners to be persons of good moral character. Good moral character shall be determined by the Board of City Commissioners. In making that evaluation, the City Commission will consider, among other factors, whether the person or entity has been convicted of any of the following offenses within the previous five years:
 - a) any felony;
 - b) any offense involving the manufacture, sale, distribution or possession for sale or distribution of alcoholic beverages;
 - c) any offense involving the sale of drugs or felony possession of drugs;
 - d) prostitution;
 - e) obscenity;
 - f) any other offense determined by the Board of City Commissioners to have a direct bearing on the applicant's or manager's ability to serve the public as an alcoholic beverage retailer.
- 5. Owner of Business. No license shall be issued to any person as the representative or agent of another, and the

license will be issued only to the owner or owners of the business being conducted at the location sought to be licensed.

6. Taxes. No license shall be issued, transferred or renewed for any location in which the real property taxes are delinquent and unpaid.

10-0105. SERVER TRAINING REQUIRED: A qualified alcoholic beverage licensee, or license applicant, under the provisions of this Chapter of the West Fargo ordinances shall be required to send all managers and employees involved in the sales or serving of alcoholic beverages at said licensed establishment to a server training course, as approved by the West Fargo Police Department.

- a. Persons successfully completing the approved class will receive a "server training certificate card," which shall remain with said individual wherever employed. The "server training certificate card" is not required to be in said person's possession during hours of employment, at a licensed establishment, provided the card can be produced within 24 hours.
- b. The "server training certificate card" must be renewed every three years.
- c. All new establishments are required, within 90 days of opening, to provide the West Fargo Police Department with a roster of managers and employees depicting first name, last name, date of birth, date of hire, and server training card expiration date.
- d. Recently hired managers and employees not having in their possession a current "server training certificate card" must within 90 days of the employment start date, successfully complete an approved server training class.
- e. All existing licensees are required to submit along with the license renewal applications, a complete roster of managers and employees involved in the sale or serving of alcoholic beverages. Said roster is to include first name, last name, date of birth, date of hire, and server training card expiration date.

Failure to comply with the above-referenced requirements may result in the delay of the liquor license renewal

and/or suspension of said license until date of compliance.

10-0106. LIABILITY INSURANCE REQUIRED OF LICENSEES. Every person licensed under the authority of this chapter, other than wholesalers, shall provide the City Auditor, not later than thirty (30) days after a license is issued, proof of liability and liquor liability insurance (Dram Shop). Such insurance shall provide coverage for at least \$50,000 per person and \$100,000 per person for liability insurance and liquor liability insurance, respectively. The adequacy of any such insurance shall be determined by the governing body of the City.

10-0107. LICENSE APPLICATION. Any person desiring to obtain the issuance, transfer or renewal of a license for the sale of alcoholic beverages shall make and file an application for such license with the Board of City Commissioners, through the City Auditor.

1. Any person applying for a license under the provisions of this section must submit a detailed floor plan of the areas which will constitute the licensed premises.
2. In the case of a renewal of the license, such application must be submitted at least forty five (45) days prior to the expiration date of the license.
3. The application shall be made on a form made available through the office of the City Auditor. In addition to the information supplied on the application form, the Commission, the City Auditor, Police Chief or his designee, may require such other information as they deem necessary in determining whether or not a license should be issued to the applicant.
4. If a license is granted, the licensee must inform the City Auditor in writing within thirty (30) days of any changes in the facts supplied to the City in the application previously submitted.

10-0108. INVESTIGATION OF APPLICANT. The Chief of Police, or such other officer as may be designated by the Chief of Police, shall investigate the facts stated in the application and the character, reputation, and fitness of the applicant, and shall report on said matters to the Board of City Commissioners.

10-0109. ISSUANCE, RENEWAL AND TRANSFER OF LICENSES.

1. No license shall be issued, renewed or transferred without the approval of the West Fargo City Commission.

A change in the location of the licensed premises shall be deemed to be a transfer.

2. If the application is for a new license or a relocation of an existing license, then notice that the applicant has applied for a license to sell alcoholic beverages at a place designated in the application, and that the application will be acted upon by the City Commission on a certain day and time, shall be published in a newspaper in the City at least ten (10) days before the date set for the hearing on the application. Such notice shall be signed by the City Auditor and the expense of its publication, in addition to the license fee, shall be paid by the applicant to the City Auditor before publication.
3. No new license, or a relocation of a license to a new location, shall be issued unless and until the applicant has proven, to the satisfaction of the governing body, that the following conditions have been met. These conditions shall not apply to license renewals:
 - a. That the premise to be licensed has a minimum of 2,500 sq. ft. of space available and devoted to the business for which the premises is licensed. The measurement of 2,500 sq. ft. will be based on the exterior measurements of the building in which the premise is located and shall not include any carports, parking areas, drive-ins, outdoor patios, or any similar exterior features to the premise. If the building is not a separate building, but has a common wall with one or more other businesses, the measurement will be from the center of any common wall.
 - b. That sufficient, well-lighted off-street parking will be available to the patrons of the establishment of the applicant.
 - c. That the establishment in question will be a definite asset to the City.
 - d. That the licensed premise has a separate entrance or entrances from any other business and have no interior connection by which customers may move directly from another business to the licensed premises. This restriction will not apply to eating establishments, motels or hotels that apply for a liquor license as part of their operation, or off sale licenses.

Additional factors to be considered in the granting of a new license:

- a. The proximity of other businesses licensed to sell alcoholic beverages.
- b. Protests of neighboring property owners or occupants.
- c. Interference with neighboring properties.
- d. Suitability of premises for sale of alcoholic beverages.
- e. Recommendations and reports of appropriate city officials, including the Chief of Police, Chief of the Fire Department, Building Inspector, and Health Officer and any of their authorized representatives.
- f. Zoning regulations.
- g. Proximity of schools, churches, funeral homes, public buildings or buildings used by and for minors.

10-0111. LICENSE FEES -DISPOSITION OF FEES. All license fees collected by the City Auditor shall be credited to the general fund of the City.

10-0112. POSTING OF LICENSES. The Certificate of license issued to a licensees must be posted in a conspicuous place within the public portion of the premises for which the license has been issued.

10-0113. LICENSES - TERMINATION, SUSPENSION AND REVOCATION. All licenses issued under the provisions of this chapter, unless otherwise specifically provided, shall terminate on June 30 following the date of issuance; provided however, that any license issued under the provisions of this chapter may, under certain circumstances, terminate automatically, or be terminated, suspended or revoked by the City Commission.

1. Any license issued under the provisions of this chapter shall automatically terminate:
 - (a) Upon the death of the licensee unless, upon application to the Commission by the personal representative of the decedent, the Commission shall consent to the carrying on of such business

by the personal representative. Said application must be submitted to the Commission within thirty (30) days of the licensee's death.

- (b) When the licensee, for any reason, ceases business at the licensed premises. Business shall be deemed to have ceased when no sale of alcoholic beverages occurs on the licensed premises for a period of at least thirty (30) consecutive business days; provided, however, upon written request of the licensee, the Commission at its discretion may grant a period of up to sixty (60) additional days before business shall be deemed to have ceased.
 - (c) When any license or permit of the licensee from the United States Government or the State of North Dakota to sell alcoholic beverages at the licensed premises has terminated or been suspended or revoked.
2. The Commission may, in its discretion, suspend or revoke for cause any license issued under the provisions of this chapter. The grounds for suspension or revocation shall include the following (but is not limited too):
- (a) An individual licensee, one of the partners in a partnership licensee, or one of the officers in a corporation licensee, or any individual designated in the application as Resident Manager of the licensed business is convicted of violating any of the provisions of this chapter.
 - (b) An individual licensee, one of the partners in a partnership licensee, or one of the officers, directors or shareholders in a corporation licensee, or any individual designated in the application as Resident Manager of the licensed business is convicted of any state or federal felony.
 - (c) The business of the licensee, at the location licensed, is conducted in such a manner as to be in violation of the health, sanitary or other regulations or ordinances of the City of West Fargo.
 - (d) The licensee, having been given a conditional license pursuant to Section 10-0104 because of failure to meet the residence requirements of this chapter, fails to have the required residency within the three (3) month period.

- (e) If the licensee, or Resident Manager ceases to meet the residence requirements of section 10.0104.
 - (f) The licensee has made any false statement in his application for a license.
 - (g) If the licensee fails to notify the City Auditor in writing within thirty (30) days of any change in the facts supplied to the City in the application for its license.
 - (h) If the establishment does not pass its fire safety inspection and fails to correct the violations within thirty (30) days of said inspection.
3. The grounds enumerated in subsection 2 of this section shall not be deemed to be exclusive and any license issued under the provisions of this chapter may be suspended or revoked by the Commission for any other reason deemed by the Commission to be sufficient in order to promote the public health, safety, morals and general welfare of the people of the City of West Fargo. When any license is suspended or revoked by the Commission pursuant to the provisions of this section, or when the licensee voluntarily ceases business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.

10-0114. ADMINISTRATIVE HEARING/WAIVER. Any person having information that a licensed retailer of alcoholic beverages has violated any provisions of this title may file with the city attorney an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the city attorney shall set the matter for hearing not later than the next regular meeting of the Board of City Commissioners. A copy of this affidavit and notice of hearing must be mailed to the licensee by registered mail not less than five days before such hearing.

1. The City Auditor shall notify the licensee of the reason for the hearing, and specify the time and place of the hearing. The notice, and any affidavits filed in support of the suspension or revocation shall be served in the same manner as provided by law with the service of the summons in the civil action, or by certified mail.
2. A record of the hearing must be made by the use of an electronic recording device, or otherwise. If after such hearing, the Commission determines that sufficient cause exists for the suspension or revocation of the license

issued pursuant to the provisions of this chapter, the Commission shall make its order for immediate suspension or revocation of the license.

3. If after such hearing the Board of City Commissioners finds the violations charged in the affidavit has been proved by the evidence, an order must be served on the licensee revoking or suspending the licensee's license for a period of time. Such action may be appealed to the district court by following the appeal procedure set forth in chapter NDCC § 28-24-01, except that the order revoking or suspending the license is inoperative while the appeal is pending. (05-02-11)

10-0115. ADMINISTRATIVE FINE, SUSPENSION, OR REVOCATION REGARDING SALE OF ALCOHOLIC BEVERAGES TO MINORS. If the violation of the liquor ordinances relates to the sale of alcoholic beverages to minors by a licensee or licensee's employees, the following administrative suspensions or revocations shall be imposed:

1. The first such violation shall subject licensee to a written warning and a 12 month Probationary Period.
2. The second violation within the Probationary Period shall subject licensee to a 3-day suspension of the license.
3. The third violation within the Probationary Period shall subject licensee to a 10-day suspension of the license.
4. Subsequent violations within the Probationary Period shall subject licensee to a 30-day license suspension.
5. If any sale of liquor products occurs on licensee's premises during a period of suspension, the license shall be suspended for the full Probationary Period.
6. For purposes of establishing the number of offenses committed by a licensee, the licensee is deemed to have committed only one offense during any 24-hour day.
7. The Probationary Period shall be a period of 12 months for a violation which is not within any period of probation already established by a

violation of any of this section, which 12 months shall be defined as commencing on the date of the said first offense and shall extend for 12 consecutive months thereafter. If any subsequent offenses occur within the said 12-month period, the probationary period for any such subsequent offense shall extend for either the same 12 consecutive months from the date of the first offense, as described above, or for a period of 6 months from the date of the subsequent offense, whichever period would expire later.

10-0116. ADMINISTRATIVE FINE, SUSPENSION OR REVOCATION REGARDING SALE OF ALCOHOLIC BEVERAGES TO A MINOR IF LICENSEE HAS CERTIFIED TO AN APPROVED TRAINING PROGRAM. If the violation relates to the sale of alcoholic beverages to minors by a licensee, if licensee has certified to an approved training program, or licensee's employees, the following administrative suspensions or revocations shall be imposed:

1. The first violation shall subject licensee to a written warning and a 12 month Probationary Period.
2. The second violation within the Probationary Period shall subject licensee to a \$250 administrative fine.
3. The third violation within the Probationary Period shall subject licensee to a \$500 administrative fine.
4. The fourth violation within the probationary period shall subject licensee to a three-day suspension of the license.
5. The fifth violation within the probationary period shall subject licensee to a ten-day suspension of the license.
6. Subsequent violations within the Probationary Period shall subject licensee to a 30-day license suspension.
7. If any sale of liquor products occurs on licensee's premises during a period of suspension, the license shall be suspended for the full Probationary Period.

8. For purposes of establishing the number of offenses committed by a licensee, the licensee is deemed to have committed only one offense during any 24-hour day.
9. The Probationary Period shall be a period of 12 months for a violation which is not within any period of probation already established by a violation of any of this section, which 12 months shall be defined as commencing on the date of the said first offense and shall extend for 12 consecutive months thereafter. If any subsequent offenses occur within the said 12-month period, the probationary period for any such subsequent offense shall extend for either the same 12 consecutive months from the date of the first offense, as described above, or for a period of 6 months from the date of the subsequent offense, whichever period would expire later.

10-0117. LOCATION OF LICENSED ALCOHOLIC BEVERAGE ESTABLISHMENTS.

1. No alcoholic beverage license shall be issued for any building, room or place within one hundred fifty (150) feet of any church, public or parochial school grounds, or synagogue. The distance to be measured in a straight line from the building in which said school or church is conducted to the principal public entrance of the place to be licensed, except in case of a church or synagogue where the governing body thereof gives the licensee written permission to locate within the said prescribed limits, and such written permission is approved and filed with the Board of City Commissioners. The foregoing shall not apply to lodges and clubs as defined herein.
2. No license to sell liquor under the provisions of this chapter shall entitle the holder thereof to carry on such business at more than one location under any one license, and each license shall contain the legal description of the place where the holder thereof operates such business.
3. No license to sell alcoholic beverages shall be issued to any applicant unless any part of the lot on which the premise is located is within three hundred (300) feet of the right-of-way of Main Street, Sheyenne Street (Cass County Highway No. 17), 9th Street East and Northeast, 13th Avenue East and West, 12th Avenue Northeast and

Northwest, 32nd Avenue East and West, 52nd Avenue East and West, Beaton Drive, 19th Avenue East, Veteran's Boulevard, or Blue Stem Drive between 31st and 32nd Avenues East, and, if a major portion of the lot does not directly abut one of the designated streets, that it has direct (but not necessarily exclusive) access to one of the designated streets.

10-0118. SALE OF ALCOHOLIC BEVERAGES IN GAS STATIONS, GROCERY STORES, AND CONVENIENCE STORES. Before a retail off sale alcoholic beverage license may be issued to a person whose business to be licensed is located in a building that is primarily a gas station, grocery store, or convenience store, the area to be licensed for the sale of alcoholic beverages must be clearly set out in a blueprint or diagram. The area licensed for the sale of alcoholic beverages must be separated from the non-licensed portion of the business by a wall designed to allow sales personnel to serve customers and make sales in both the licensed and unlicensed portions of the premises, and that may allow customers in either portion of the premises access to the other portion. Purchases of alcohol must be made in the area licensed for the sale of alcoholic beverages.

10-0119. HOURS OF SALE - PROHIBITION OF SALES ON HOLIDAYS.

1. A person may not dispense or permit the consumption of alcoholic beverages on a licensed premises between two a.m. and eleven a.m. on Sundays, between the hours of two a.m. and eight a.m. all other days of the week, or on Christmas Day, or after six p.m. on Christmas Eve. In addition, a person may not provide off-sale after two a.m. on Thanksgiving Day or between two a.m. and noon on Sunday. A person who violates this section is guilty of a Class A Misdemeanor.

Source: Ord. 1042, Sec. 2 (2015)

2. Nothing in this section shall be construed as permitting the sale or dispensing of intoxicating liquor when such sales are prohibited by state or federal law.

10-0120. RESTRICTIONS ON SALE, SERVICE OR DISPENSING OF ALCOHOLIC BEVERAGES.

1. No licensee, his agent or employee, shall sell, serve or dispense any alcoholic beverage to a person under twenty-one (21) years of age; no licensee, his agent, or employee, shall permit any person under 21 years of age to be furnished with any alcoholic beverage upon the licensed premises.

2. No licensee, his agent or employee shall sell, serve or dispense, nor permit to be furnished with any alcoholic beverage upon the licensed premises, an obviously intoxicated person, a person under guardianship after written notice of such guardianship by the legal guardian and during the continuance of such guardianship.
3. No person under 21 years of age shall be permitted to enter any room of a licensed premises in which alcoholic beverages are sold, served or dispensed. Nor shall anyone under the age of 21 years be employed in any room or rooms on a licensed premises which alcoholic beverages are sold on-sale, except as provided in subsections 4, 5 and 6 of this section.
4. Any person under 21 years of age may enter and remain in a restaurant where alcoholic beverages are sold if the restaurant is separated from the room by a permanent partition/barrier that is at least 3 feet in height, in which alcoholic beverages are opened or mixed and if gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, or if the person is employed by the restaurant as a food waiter, food waitress, busboy or busgirl, and is under the supervision of someone 21 years of age or older, and does not engage in the sale, dispensing, delivery or consumption of alcoholic beverages; provided, that any person who is between 18 and 21 years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person 21 or more years of age.
5. A law enforcement officer, or person cooperating with and under the control of such law enforcement officer, under the age of 21 years may enter premises where alcoholic beverages are sold, dispensed, or consumed in the performance of an official duty.
6. Any establishment where alcoholic beverages are sold may employ persons from 18 to 21 years of age to work in the capacity of musicians under the direct supervision of a person over 21 years of age.
7. Any person under 21 years of age may remain in the area of an event where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to Section 10-01259 hereof.

8. If a licensee owns or operates a Recreational Establishment which is open to persons under 21 years of age, the licensee shall designate, in its license application, an area to be used solely in its recreational capacity by persons under 21 years of age. No such licensee shall permit the sale, service, dispensing or consumption of alcoholic beverages in such designated area and no such licensee shall permit persons under 21 years of age to enter any area not so designated. The designated area must be separated from the rest of the establishment by a permanent partition/barrier which is at least three feet in height.
9. If a licensee owns or operates a bowling alley there must be a designated area where beverages are purchased, served and or mixed and persons under 21 may not enter that designated area of the premises. The designated area must be separated from the rest of the establishment by a permanent partition/barrier which is at least three feet in height. Alcoholic beverages purchased within the designated area may be consumed in the bowling alley area and concourse adjacent to the bowling alley.
10. No off-premise liquor or beer licensee shall permit the opening or consumption of alcoholic beverages upon the licensed premises; provided, however, the licensee may permit the sampling of alcoholic beverages upon the licensed premises without charge to the consumer.
11. Notwithstanding any other ordinance or state statute to the contrary, a person under the age of 21 cooperating with and under control of a law enforcement officer may enter a licensed premises for the purposes of a compliance check on whether the licensee is complying with the laws prohibiting the sale of alcoholic beverages to a minor.

10-0121. DELIVERY OF ALCOHOLIC BEVERAGES. No licensed retail alcoholic beverage dealer, the officers, employees or agents in the City of West Fargo shall deliver or shall cause to be delivered to any customer outside of the licensed premises, any alcohol or alcoholic beverages sold under the terms and provisions of this chapter.

10-0122. PURCHASE TO BE FROM LICENSED WHOLESALER. No licensee shall purchase, have, or possess any alcohol or alcoholic beverages as defined by the laws of the State of North Dakota unless licensee has purchased the same from a wholesaler duly licensed pursuant to the provisions of the laws of the State of North Dakota.

10-0123. LICENSED PREMISES - REQUIREMENTS FOR.

1. Every on-sale retail premise licensed for the sale of alcoholic beverages must be equipped with adequate and sufficient lavatories and toilets separately maintained for men and women and kept in a clean and sanitary condition.
2. Every licensee of an off sale liquor license which has a drive-in window for service must provide sufficient lighting so as to remove any and all traffic hazards that might arise as a result of the drive-in window and provide for motor vehicle ingress and egress to and from said facility without in any way impeding, hampering, delaying or jeopardizing the safe flow of motor vehicle traffic.
3. Every on-sale retail premise licensed for the sale of alcoholic beverages, which does not have gross sales of food greater than gross sales of alcoholic beverages in the separate dining area, which has premises that extend out-of-doors (hereinafter the "outdoors"), must meet the following requirements:
 - a. The outdoors must be contiguous with the rest of the licensed premises (hereafter called "indoors").
 - b. The periphery of the outdoors shall be enclosed with a wall, fence or dense plantings maintained at a minimum height of at least forty-two (42) inches so as to clearly define the boundary of the licensed premises and to prevent ingress/egress to the outdoor premises. The licensee shall post signs around the periphery of the outdoors stating that patrons may only enter the outdoor area through the licensed premises entrance.
 - c. A wall, fence or plantings required under subsection 3(b) may not contain any gates except as required under the fire code. Such gates shall remain secured during business hours, but shall be equipped with a latch that can only be released from the inside and which allows for emergency exit from the premises.
 - d. Access to the patio shall be made only through the licensed premises.

- e. The licensee shall file with the building inspector a site plan showing the location, plans and specifications of the proposed enclosure in relation to the licensed structure and the lot lines of the premises. The proposed plan must be approved by the building inspector and fire chief, and the enclosed patio area may not exceed the total square footage of the licensed premises to which it is attached.
 - f. The requirements set forth in this section shall take effect on July 1, 2016.
4. Every on-sale retail premise licensed for the sale of alcoholic beverages in which gross sales of food are greater than gross sales of alcoholic beverages in the separate dining area, which has premises that extend out-of-doors (hereinafter the "outdoors") must meet the following requirements:
- a. The outdoors must be contiguous with the rest of the licensed premises (hereafter called "indoors").
 - b. The periphery of the outdoors shall be clearly defined with a wall, fence or plantings, or combination thereof, enclosing at least eighty percent (80%) of the perimeter of the outdoor area, maintained at a minimum height of at least twenty-eight (28) inches so as to clearly define the boundary of the licensed premises and permit the licensee to monitor patron activity.
 - c. The licensee shall file with the building inspector a site plan showing the location, plans and specifications of the proposed enclosure in relation to the licensed structure and the lot lines of the premises. The proposed plan must be approved by the building inspector and the fire chief, and the enclosed patio area may not exceed the total square footage of the licensed premises to which it is attached.
 - d. The requirements set forth in this section shall take effect on July 1, 2016.

10-0124. INSPECTION OF LICENSED PREMISES TO BE ALLOWED. The licensee accepts the license privileged upon the condition, which need not elsewhere be expressed, that the Board of City Commissioners, the City Auditor, the Fire Department Chief, the Chief of Police, any officer of the Health Department or authorized representatives of any of the aforementioned departments may, at any time, enter upon the premises licensed for the purpose of police inspection, or to determine whether the premises are being conducted in compliance with the ordinances of the City.

10-0125. CABARET LICENSE.

1. DEFINITIONS.

- (a) Entertainment - shall be defined for purposes of this Ordinance to mean all forms and types of performing or entertaining for patrons on licensed premises without regard as to whether such entertainment is provided by means of live performances or manually operated, electronic systems designed for stereophonic playback of prerecorded signals: provided, however, that entertainment shall not be deemed to include the use of any television, radio or coin operated music machine.
- (b) Live performances - shall be defined for the purpose of this Ordinance to mean any person who for consideration, monetary or otherwise, performs in person on a licensed premise as a singer, musician, dancer, comedian, model, or any other type of entertainer.

- 2. No licensee under this Chapter shall permit entertainment for more than one day a week any given week without first having obtained a cabaret license as hereinafter provided.
- 3. The license fee for cabaret license shall be \$250.00 per year.
- 4. The license fee set forth in subsection 3 of this section shall be for a period of one year from July 1 to June 30 and shall be payable in advance at the time of the issuance of the license and thereafter, on or before

June 10 of each subsequent year for renewal of said license.

5. The application for cabaret license shall be made by the licensee on forms provided by the City Auditor's office of the City of West Fargo. The granting of a cabaret license shall be subject to the approval of the commission and it may be suspended or revoked in conformance with procedures established under Section 10-0113.
6. No live performances are permitted on a licensed premises which contain any form of dancing. Such prohibition on dancing does not include the incidental movement or choreography of singers or musicians which are made in connection with their singing or playing of a musical instrument. This restriction applies to all licensed premises whether or not they have a cabaret license.
7. No live performances are permitted on a licensed premise which involve the removal of clothing, garments or any other costume. Such prohibition does not include the removal of headwear or footwear; or the incidental removal of a tie, suit coat, sport coat, jacket, sweater or similar outer garments. Incidental removal for purposes of this section shall mean the removal of a garment or article of clothing which is not a part of the act or performance. This restriction applies to all licensed premises whether or not they have a cabaret license.
8. No entertainment on a licensed premise shall contain:
 - (a) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
 - (b) The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus or genitals;
 - (c) The actual or simulated displaying of the pubic hair, anus, vulva or genitals; or the nipples of a female. This restriction applies to all licensed

premises whether or not they have a cabaret license.

9. A licensee shall have the duty and responsibility to make available for inspection by a member of the West Fargo Police Department an identification card, such as a driver's license, containing a photograph and the age of all entertainers or performers on the licensed premises. The licensee shall not permit a person to make a live performance on the licensed premises if the licensee is not able to obtain the required identification from the performer.

10-0126. APPLICATION OF CHAPTER. This chapter shall apply to all territory within the corporate limits of the City and, as permitted by state law to such outlying contiguous territory without the corporate limits within which the City may exercise police jurisdiction, as defined by law.

10-0127. PENALTY. Any person, firm or corporation violating the terms of this chapter shall, upon conviction thereof, be punished by a fine not to exceed \$500.00 or imprisonment not to exceed 30 days, or by both such fine and imprisonment, at the discretion of the Court. Provisions of Section 1-0807 shall also apply. Such a penalty should be in addition to the authority of the City Commission to suspend or revoke a license pursuant to Section 10-0113.

10-0128. SEVERABILITY CLAUSE. If any section, subsection, sentence or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance.

10-0129. SPECIAL PERMITS FOR SALE OF ALCOHOLIC BEVERAGES.

1. Authorization. The City Commission shall have the authority to issue special permits for the sale of alcoholic beverages when authorized to do so by state law as provided in Sections 5-0201.1 and 5-0205.1, or any other state statute now in effect, or as amended, or enacted in the future which provides authority for cities to issue special permits for the sale of alcoholic beverages.
2. Licenses and Special Conditions. Any person or entity seeking a permit as authorized by paragraph 1 of this

section must apply to the City Commission for such a permit. The City, in granting such a permit, shall have the authority to put additional conditions on the license over and above the conditions and requirements provided in state law, if the Commission deems it desirable to do so.

3. License Fee. The City, by resolution, may provide a schedule for fees for such special permits, which fees shall not exceed the maximum permitted by state law.
4. Restrictions on License. Any special permits given pursuant to this section shall be subject to all of the provisions of Chapter 10-01 of the Revised Ordinances of 1990 of the City of West Fargo, except where such provisions are in conflict with the provisions of state law authorizing special permits.
5. Revocation of License. The special licenses authorized by this section may be suspended or revoked by the City for violations of the terms of this section, as well as any other provisions of Chapter 10-01. In addition, violation of the provisions of this section also subject a violator to suspension or revocation of any other license for the sale of alcoholic beverages issued by the City of West Fargo pursuant to Section 10-0113.
6. The City may authorize persons under twenty-one years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization must be subject to the following minimum conditions:
 - a. The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
 - b. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine;
 - c. Subject to section 10-0120, the area where persons under twenty-one years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the

alcoholic beverage license issued pursuant to this chapter; and

- d. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.

10-0130. REGISTRATION OF BEER IN KEGS REQUIRED PRIOR TO SALE.

1. Any retail alcoholic beverage licensee who sells beer in a container with a liquid capacity greater than six (6) gallons [22.71 liters] must place the licensee's state retail alcoholic beverage license number on the container and also must mark the container with a "registration" number or letters, or both, unique to that container. The paint or ink used to mark the containers or other manner of marking the containers must be approved by the attorney general.
2. Whenever a retail alcoholic beverage licensee sells beer in a container with a liquid capacity greater than six (6) gallons [22.71 liters], he or she shall record the date of sale and the name, address, and driver's license number or number of other official state or military identification card of the person to whom the beer is sold, together with the signature, and registration number, or letters of the container, or both. Such records must be retained for a period of no less than six (6) months and must be kept on the licensed premises of the retail establishment where the sales are made.
3. Each retail alcoholic beverage licensee shall permit any law enforcement officer to inspect the records required to be kept pursuant to this section during times the retail establishment is normally open for business or at other reasonable times.
4. This section does not apply to the sale of beer in a container by a retail alcoholic beverage licensee if the contents of the container are consumed on the licensed premises where the sale occurred.

10-0131. SUNDAY OPENING

1. Sunday licenses authorized. A Sunday alcoholic beverage license may be issued to a licensee licensed under this

chapter. The Board of City Commissioners may issue Sunday licenses and permits under this section. The Sunday license shall be effective for one year.

2. Application for license. The application for a Sunday alcoholic beverage license must be made in writing and be accompanied by a fee the corresponding fee:

Sunday Beer/Wine: \$100.00 for the first year, \$50.00
renewal

Sunday Beer: \$100.00 for the first year, \$50.00
renewal

Sunday Off/On Liquor/Beer: \$260.00 per year

Sunday Off Sale Liquor/Beer: \$260.00 per year

Sunday On Sale Liquor/Beer: \$260.00 per year

3. Applications for a Sunday license must be received in the office of the City Administrator prior to July 1 and shall be valid until June 30 of the following year. Applications received after that time shall be valid for the remainder of the term with the fee prorated for the remaining Sundays.
4. Use of license: Under the Sunday alcoholic beverage license, alcoholic beverages may be distributed in the licensed areas of a licensed liquor establishment. The sales will be permitted between the hours of 11:00 a.m. on Sunday until 2:00 a.m. on Monday.
5. The rules regarding revocation or suspension of licenses shall apply to this section.

10-0132. PUBLIC CONSUMPTION OF ALCOHOLIC BEVERAGES RESTRICTED.

1. No person shall consume any alcoholic beverages upon any street, avenue, alley, sidewalk, stairway, thoroughfare or other public property in an area zoned commercial within the City of West Fargo, nor in or upon the parking areas of any private shopping center, hotels, motels, licensed liquor establishments, restaurants, clubs, churches or similar establishments, nor in any area within a commercial property unless such area has been

designated as part of a on sale licensed premise, or granted a special event permit under Section 10-0125, or been granted a permit by the City Auditor for a special event.

2. Any person who violates the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars.

10-0133. BOTTLE CLUBS PROHIBITED. It shall be unlawful to operate an establishment, other than a motel or hotel, whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix, ice, or charges for bringing such beverages on the premises. Such prohibition shall not prohibit restaurants from charging a corking fee to a customer who brings his/her own wine to the restaurant.

10-0134. REMOVAL OF WINE FROM RESTAURANT. If a full bottle of wine has been opened and the contents partially consumed, a retail alcoholic beverage licensee whose gross sales of food are at least thirty percent of the gross sales of alcoholic beverages that are consumed on the premises may permit an individual purchasing the bottle in conjunction with the purchase of a meal to remove the bottle on leaving the licensed premises if the licensee recorks the bottle, seals the bottle with a seal that must be made conspicuously inoperative to reopen the bottle, and places a receipt of sale with the bottle. The removal of the bottle under these conditions is not an off sale of wine and is permitted without an additional license.

10-0135. SALE OF ALCOHOLIC BEVERAGES IN EXCHANGE FOR GOODS PROHIBITED. Any licensee engaged in the retail sale of alcoholic beverages who accepts goods, chattels, or other tangible personal property, other than money, checks, legal tender, negotiable instruments, or other evidences of debt, in exchange for any alcoholic beverages is guilty of a class B misdemeanor.

10-0136. POWDERED ALCOHOL PRODUCTS PROHIBITED. It shall be unlawful to sell, offer to sell, purchase, offer to purchase, possess, or consume a powdered alcohol product. Any person who violates the provisions of this section shall be guilty of a class B misdemeanor.

Source: Ord. 1041, Sec. 11 (2015)

CHAPTER 10-02

GAMBLING

SECTIONS:

- 10-0201. Games of Chance.
- 10-0202. Application for Local Gambling License or Site Authorization.
- 10-0203. Limitation on Site Authorizations.
- 10-0204. Limitation on Hours and Participation of Games of Chance.
- 10-0205. Availability of Records.

10-0201. GAMES OF CHANCE. Notwithstanding any other provision of the ordinances of the City of West Fargo to the contrary, it shall not be unlawful to play or conduct games of chance pursuant to Chapter 53-06.1 of the North Dakota Century Code, as that chapter may be amended from time to time, and any implementing rules and regulations of the Attorney General and guidelines established by the City of West Fargo by ordinance or resolution.

10-0202. APPLICATION FOR LOCAL GAMBLING LICENSE OR SITE AUTHORIZATION. No person or entity shall conduct a game of chance as defined in Section 10-0201 without first having obtained a license or site approval as required by state law. Applications for local gaming licenses, or applications for site approval shall be made to the City Auditor of the City of West Fargo. No site authorization nor gambling license shall be granted by the City of West Fargo unless the applicant follows the procedures and pays the fees as set by the City by resolution, which resolution shall be on file with the City Auditor.

10-0203. LIMITATION ON SITE AUTHORIZATIONS. No site authorization for pull tabs, jars, punch boards, twenty-one, or sports pools shall be granted by the City except to premises having an on-sale liquor license from the City of West Fargo. This section shall not repeal site authorizations in effect on the date this ordinance is adopted, nor shall it apply to renewals of site authorizations in effect on the date this ordinance is adopted. Provided, however, that the renewal of site authorizations which would otherwise be prohibited by this section may not expand the type of gambling to be conducted at the site, nor the maximum

number of black jack tables to be used at the site over the types of gambling and number of tables permitted by the site authorization in effect on the date of the adoption of this ordinance.

10-0204. LIMITATION ON HOURS AND PARTICIPATION OF GAMES OF CHANCE. A person under 21 years of age may not participate in the games of pull tabs, jars, punch boards, twenty-one, or sports pools. No games of chance shall be conducted in licensed liquor premises, or at premises for which site authorizations have been granted by the City of West Fargo other than during the hours when alcoholic beverages may be dispensed in accordance with the applicable regulations of the State of North Dakota and the City of West Fargo.

10-0205. AVAILABILITY OF RECORDS. The person or entity obtaining the site authorization shall make available to the City and/or the North Dakota Attorney General's office for inspection and audit any and all records relating to the expenses, proceeds, and distribution of the proceeds from the authorized site. Failure to do so upon reasonable notice shall be grounds for suspension or revocation of the site authorization.

CHAPTER 10-03
[Source: Ord. 693, Sec. 1 (2003)]

PAWNBROKERS

SECTIONS:

- 10-0301 Purpose.
- 10-0302 Definitions.
- 10-0303 Fixed premises and license required.
- 10-0304 License and renewal.
- 10-0305 Bond.
- 10-0306 Fee for license.
- 10-0307 Investigation fee.
- 10-0308 Effective period, renewal and suspension or revocation.
- 10-0309 Acts prohibited by minors.
- 10-0310 Required records.
- 10-0311 Daily reports to police.
- 10-0312 Receipt required.
- 10-0313 Redemption period.
- 10-0314 Holding period.
- 10-0315 Articles available for inspection.
- 10-0316 Police order to hold property.
- 10-0317 Label required.
- 10-0318 Motor vehicle title pawn transactions; special provisions.
- 10-0319 Prohibited acts.
- 10-0320 Reporting of sales.
- 10-0321 Penalty.

10-0301. PURPOSE. The City Commission recognizes the need to regulate pawnbrokers to provide the ability to identify stolen property presented to pawn shops and to identify those responsible for committing property crimes. The commission also determines the need to provide a basic level of consumer protection through a comprehensive pawnbroker ordinance.

To help the police department better regulate future pawn businesses, decrease and stabilize regulatory costs, and improve identification of criminal activities through the timely collection and sharing of transaction information, this chapter also implements and establishes the required use of the LEADS system or,

at the discretion of the Chief of Police, the Automated Pawn System.

10-0302. DEFINITIONS.

1. "Licensee" shall mean all pawnbrokers required to be licensed by this chapter.

2. "Pawnbroker" shall mean any person who:

- A. Loans money on deposit or pledge of personal property, or other valuable thing;
- B. Deals in the purchasing of personal property or other valuable thing, on condition of selling the same back again at a stipulated price; or
- C. Loans money, secured by chattel mortgage on personal property, taking possession of the property or any part thereof so mortgaged.
- D. To the extent that a pawnbroker's business includes buying personal property previously used, rented or leased, or selling it on consignment, the provisions of this chapter shall be applicable.

3. "Person" shall mean any individual, partnership, corporation or association or any other legal entity, or any agent or employee thereof.

4. "Regulated transaction" shall include all purchases, loans, pawns, trades or consignments made by a pawnbroker.

5. "Reportable transaction" shall include every transaction conducted by a pawnbroker in which merchandise is received through a pawn, purchase, consignment or trade, or for which a unique transaction number or identifier is generated by their point-of-sale software, is reportable except:

- A. The bulk purchase or consignment of new or used merchandise from a merchant, manufacturer or wholesaler having an established permanent place of business, and the retail sale of said merchandise, provided the pawnbroker must maintain a record of such purchase or consignment which describes each item.

- B. Retail and wholesale sales of merchandise originally received by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.

10-0303. FIXED PREMISES AND LICENSE REQUIRED. No person shall engage in business as a pawnbroker unless said person has a fixed premises where said business is conducted, either on a continuing basis or from time to time, and unless said person has first obtained a license to engage in that business at that premises. A separate license is required for each place of business. The City may issue more than one license to a person if the person complies with the requirements of the chapter. A license issued under this chapter shall be prominently displayed at the licensed premises during hours when such premises is open for business. If, during the effective period of a license issued under this chapter a licensee changes the location of the licensed premises within the City, such licensee shall inform the City Auditor and the Chief of Police of such change of location and shall have the new premises to be licensed noted on the license. There shall be no additional fee charged for changing the location of the licensed premises. The operation of a business as a pawnbroker without a license as required by this section shall be a class B misdemeanor.

10-0304. LICENSE AND RENEWAL.

1. Any person desiring to obtain, renew or transfer a license shall make and file an application for such license with the commission. The application shall be made on a form approved by the Chief of Police and made available through the office of the City Auditor. In addition to the information required on the application form, the commission, in its discretion, may require such other information as it deems necessary in determining whether a license should be issued to the applicant.

2. The holder of a license issued pursuant to the provisions of this ordinance who desires to renew said license for another license year, shall not be required to make and file a new application under this section but shall make and file a renewal application under the provisions of this section which shall require the payment of the renewal fee and shall include an affidavit indicating the current name and address of the licensee, and if said licensee is a corporation, the names and addresses of the resident manager, all corporate officers, and all shareholders

holding more than 5% of the outstanding stock of the corporation, and such other information as the City may require. The renewal application and affidavit shall be on a form to be prescribed by the Chief of Police made available through the City Auditor's office.

3. The application for a new license or renewal of a license shall require that the applicant agrees to provide the police department with the records required by Section 10-0311 in a format, including electronically transmitted digital data, as required by the police department.

4. The Chief of Police, or his designee, shall investigate the facts stated in the application filed with the Commission and shall report the results of the investigation to the Commission prior to the hearing on said application. Said investigation and report shall include the character, reputation, fitness of the applicant to hold a license, any other pertinent information and the recommendation of the Chief of Police, or his designee, as to whether or not such license should be granted. In addition, the Commission may request and consider such other recommendations and reports of other city officials.

5. Any pawnbroker as defined under Section 10-0302.2.D. shall not be required to purchase a separate license as a second-hand or precious metals dealer.

10-0305. BOND. Before a license will be issued or renewed, every applicant must submit a five thousand dollar (\$5,000.00) bond on the forms provided by the Auditor's office, with sufficient sureties to be approved by the Auditor's office. All bonds must be conditioned that the principal will observe all laws in relation to pawnbrokers and will conduct business in conformity thereto, and that the principal will account for and deliver to any person legally entitled any goods which have come into the principal's hand through the principal's business under this chapter, or in lieu thereof, will pay the reasonable value in money to the person. This language shall not be construed to apply to items the principal has legally disposed of under the requirements of this ordinance. The bond shall contain a provision that no bond may be canceled except upon thirty (30) days written notice to the Chief of Police.

Alternately, a licensee may provide proof to the Auditor's office of a separate dedicated account with a balance of \$5,000.

10-0306. FEE FOR LICENSE AND APPLICATION FEE. The fee for issuance of a license to engage in business as a pawnbroker shall be in such amount as shall be established by resolution of the Board of City Commissioners.

10-0307. INVESTIGATION FEE. The fee for the investigation of an initial application or renewal for a license to engage in business as a pawnbroker shall be paid to the City Auditor at the time an application is submitted. The amount of the investigation fee shall be established by resolution of the Board of City Commissioners.

10-0308. EFFECTIVE PERIOD, DENIAL, RENEWAL AND SUSPENSION OR REVOCATION. A license issued under this chapter shall be valid and effective until December 31 of the year for which the license applies. Every license issued under the provisions of this chapter shall be issued upon the understanding that such license may be revoked or suspended by the Board of City Commissioners at any time for good cause, for failure to comply with any provision of this chapter, or by any fraud, misrepresentation bribery, or false statements in the application, investigation, securing or renewing a license, or the conviction of a license holder of a violation of this chapter or any criminal conviction related to theft of property or any felony conviction. Notice of such revocation or suspension must be sent to the licensee by certified mail addressed to the licensee at the address set forth in the application. The Chief of Police shall be notified of the revocation or suspension of any license. The licensee may appeal a revocation or suspension to the Board of City Commissioners and request a public hearing on such revocation or suspension. If a person or entity has a pawnbroker's license in effect at the adoption of this ordinance, and is operating a business under the license, the current license shall stay in effect, but the licensee must comply with all the terms of this ordinance. If an entity has a license but is not operating a business under that license at the adoption of this ordinance, the license holder must reapply for a license, but the prior fee paid for the old license shall be applied to the new license fee. Upon expiration of a license already in effect at the time of the adoption of this ordinance, an application for a new license must be made, not a renewal.

10-0309. ACTS PROHIBITED BY MINORS. No person under the age of 18 years shall pawn, sell or otherwise initiate a reportable transaction with any person licensed to do business under this chapter nor may any licensee receive be involved in any reportable transaction from a person under the age of 18 years. No person

under the age of 18 years shall represent to any person licensed under the provisions of this chapter, that he is 18 years of age or over.

10-0310. REQUIRED RECORDS. At the time of any reportable transaction other than renewals, extensions or redemptions, every licensee must immediately record in English the following information by using ink or other indelible medium on forms or in a computerized record approved by the Chief of Police. Such record shall specifically include:

1. A complete and accurate description of each item including, but not limited to any trademark, identification number, serial number, model number, brand name or other identifying mark on such an item.

2. The purchase price, amount of money loaned upon, or pledged.

3. The maturity date of the transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges.

4. Date, time and place the item of property was received by the licensee, and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the licensee's records.

5. Full name, current residence address and phone number, date of birth and accurate description of the person from whom the item of the property was received including sex, height, weight, race, color of eyes and color of hair.

6. The identification number and state of issue of a current state photo driver's license or state photo identification card.

7. The signature of the person identified in the transaction.

8. Renewals, extensions and redemptions. For renewals, extensions and redemptions, the licensee shall provide the original transaction identifier, the date of the current transaction, and the type of transaction.

9. Inspection of records. Transaction records must at all reasonable times be open to inspection by the police department during the licensee's business hours. Data entries shall be

retained for at least three (3) years from the date of transaction.

10-0311. DAILY REPORTS TO POLICE. Licensees must submit every reportable transaction to the police department daily in the following manner:

Licensees must provide to the police department all information required in Section 10-0310 (1) through (7) and other required information, by transferring it from their computer to the LEADS system or, in the discretion of the Chief of Police, the Automated Pawn System, or both. If the Chief of Police elects to require use of the Automated Pawn System, the Chief of Police must give license holders 90 days' notice of such requirement. All required records must be transmitted completely and accurately each day in accordance with the standards and procedures established by the issuing authority. If a licensee is unable to successfully transfer the required information to LEADS, or the Automated Pawn System, if applicable, the licensee must provide the police department printed copies of all reportable transactions, by 12:00 the next business day. The licensee must make all reasonable efforts to correct the problem as soon as possible.

Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day since the problem existed.

10-0312. RECEIPT REQUIRED. Every licensee must provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for three (3) years. The receipt must include the information identified in Section 10-0310 (1) through (7) RECORDS REQUIRED.

10-0313. REDEMPTION PERIOD. Any person pledging, pawning or depositing an item for security must have a minimum of sixty (60) days from the date of that transaction to redeem the item before it may be forfeited and sold. During the sixty (60) day period, items may not be removed from the licensed location.

10-0314. HOLDING PERIOD. Any item purchased by a licensee and defined in Section 10-0302.5 must not be sold or otherwise transferred for thirty (30) days from the date of the transaction.

10-0315. ARTICLES AVAILABLE FOR INSPECTION. All property received by a pawnbroker in a reportable transaction shall be made available for inspection by City police officers during reasonable business hours.

10-0316. POLICE ORDER TO HOLD PROPERTY.

1. Investigative hold. Whenever a law enforcement official from any agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency within seventy-two (72) hours and will remain in effect for fifteen (15) days from the date of initial notification, or until the investigative order is canceled, or until an order to hold/confiscate is issued, whichever comes first.

2. Order to hold. Whenever the Chief of Police, or the Chief's designee, notifies a licensee not to sell an item, the item must not be sold or removed from the licensed premises until authorized to be released by the Chief or the Chief's designee. The order to hold shall expire ninety (90) days from the date it is placed unless the Chief of Police or the Chief's designee determines the hold is still necessary and notifies the licensee in writing.

3. Order to confiscate. If an item is identified as stolen or evidence in a criminal case, the Chief or Chief's designee may:

- A. Physically confiscate and remove it from the shop, pursuant to a written order from the Chief or the Chief's designee; or
- B. Place the item on hold or extend the hold as provided in section b, and leave it in the shop.

When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation.

When an order to hold/confiscate is no longer necessary, the Chief of Police, or Chief's designee shall so notify the licensee.

10-0317. LABEL REQUIRED. Licensees must attach a label to every item at the time it is pawned, purchased or received in inventory from any reportable transaction. Permanently recorded on

this label must be the number or name that identifies the transaction in the shop's records, the transaction date, the name of the item and the description or the model and serial number of the item as reported to the police department, whichever is applicable, and the date the item is out of pawn or can be sold, if applicable. Labels shall not be re-used.

10-0318. MOTOR VEHICLE TITLE PAWN TRANSACTIONS; SPECIAL PROVISIONS. In addition to the other requirements of this chapter, a pawnbroker who holds a title to a motor vehicle (to the extent permissible under North Dakota state law) as part of a pawn transaction shall:

1. Be licensed as a used motor vehicle dealer under the North Dakota Century Code and post such license on the pawnshop premises.

2. Verify that there are no liens or encumbrances against the motor vehicle with the department of motor vehicles.

10-0319. PROHIBITED ACTS:

1. No licensee may receive any goods, unless the seller presents identification in the form of a valid driver's license, a valid State of North Dakota identification card, or current valid photo driver's license or identification card issued by the state or providence of residency of the person from whom the item was received.

2. No licensee may receive any item of property that possesses an altered or obliterated serial number or operation identification number or any item of property that has had its serial number removed.

3. No person may pawn, pledge, sell, consign, leave, or deposit any article of property not their own; nor shall any person pawn, pledge, sell, consign, leave, or deposit the property of another, whether with permission or without; nor shall any person pawn, pledge, sell, consign, leave, or deposit any article of property in which another has a security interest; with any licensee.

4. No person seeking to pawn, pledge, sell, consign, leave, or deposit any article of property with any licensee shall give a false or fictitious name; nor give a false date of birth; nor give a false or out of date address of residence or telephone number;

nor present a false or altered identification, or the identification of another; to any licensee.

10-0320. REPORTING OF SALES. In addition to the reporting requirements set out elsewhere in this Chapter, the licensee, on all sales by licensee to a third party of items over \$500, must record the name, address and telephone number of the buyer and retain such record for a period of 24 months.

10-0321. PENALTY. Any person, firm or corporation violating the terms of this chapter, except as provided in Section 10-0303, shall upon conviction thereof, be guilty of an infraction, and punished by a fine not to exceed \$750 or such other amount as permitted under state law, the court to have power to suspend said sentence and to revoke the suspension thereof.

Source: Ord. 961, Sec. 3 (2013)

CHAPTER 10-03A
[Source: Ord. 692, Sec. 1 (2003)]

SECONDHAND GOODS DEALERS

Section:

- 10-03A01 Purpose.
- 10-03A02 Definitions.
- 10-03A03 Fixed premises and license required.
- 10-03A04 License and renewal.
- 10-03A05 Bond.
- 10-03A06 Fee for license.
- 10-03A07 Investigation fee.
- 10-03A08 Effective period, renewal and suspension or revocation.
- 10-03A09 Acts prohibited by minors.
- 10-03A10 Required records.
- 10-03A11 Daily reports to police.
- 10-03A12 Receipt required.
- 10-03A13 Holding period.
- 10-03A14 Articles available for inspection.
- 10-03A15 Police order to hold property.
- 10-03A16 Label required.
- 10-03A17 Prohibited acts.
- 10-03A18 RESERVED FOR FUTURE USE.

10-03A01. PURPOSE. The city commission recognizes the need to regulate secondhand dealers to provide the ability to identify stolen property that may be presented to secondhand shops and to identify those responsible for committing property crimes. The commission also determines the need to provide a basic level of consumer protection through a comprehensive ordinance.

To help the police department better regulate secondhand businesses, decrease and stabilize regulatory costs, and improve identification of criminal activities through the timely collection and sharing of transaction information, this chapter also implements and establishes the required use of the LEADS system or, at the discretion of the Chief of Police, the Automated Pawn System.

10-03A02. DEFINITIONS. (Source: Ord. 1035, Sec. 1 (2015))

1. Licensee" shall mean all secondhand dealers required to be licensed by this chapter.

2. "Secondhand dealer" shall mean:

A. Any person, firm, or corporation other than a pawnbroker or dealer in precious metals and gems who purchase, collects, trades, sells, or deals in secondhand goods including, but not limited to: business machines, tape recorders and tapes, compact discs, radio transmitters and receivers, computer hardware, computer software, electronic games and their components, musical instruments, cameras and accessories, power tools, sporting goods, stereos, stereo equipment, tools and tool boxes, television sets, weapons, bicycles, radios microwave ovens, household furniture, appliances and jewelry.

B. Exemptions: any person --

- (1) dealing exclusively in the resale of new and/or used automobiles;
- (2) involved in the casual and occasional sales of used household goods by the owner to the public, if the seller is not engaged for profit in the business of selling goods of that nature; this category includes those sales commonly referred to as "garage sales";
- (3) operating a junkyard for wrecked automobiles;
- (4) conducting sales of secondhand goods at stores or events sponsored by nonprofit corporations or associations or fraternal or religious organizations;
- (5) dealing exclusively in the resale of secondhand books or magazines;
- (6) conducting the auction of goods by a licensed auctioneer;
- (7) operating a bona fide antique, used furniture or used clothing store.

3. "Person" shall mean any individual, partnership, corporation or association or any other legal entity, or any agent or employee thereof.

4. "Regulated transaction" shall include all purchases, trades or consignments made by a secondhand dealer.

5. "Reportable transaction" - all regulated transactions except:

- A. The bulk purchase or consignment of new or used merchandise from a merchant, manufacturer or wholesaler having an established permanent place of business, and the retail sale of said merchandise, provided the secondhand dealer must maintain a record of such purchase or consignment which describes each item.

10-03A03. FIXED PREMISES AND LICENSE REQUIRED. No person shall engage in business as a secondhand dealer unless said person has a fixed premises where said business is conducted, either on a continuing basis or from time to time, and unless said person has first obtained a license to engage in that business at that premises. A separate license is required for each place of business. The city may issue more than one license to a person if the person complies with the requirements of the chapter. A license issued under this chapter shall be prominently displayed at the licensed premises during hours when such premises is open for business. If, during the effective period of a license issued under this chapter, a licensee changes the location of the licensed premises within the city, such licensee shall inform the City Auditor and the Chief of Police of such change of location and shall have the new premises to be licensed noted on the license. There shall be no additional fee charged for changing the location of the licensed premises. The operation of a business as a secondhand dealer without a license as required by this section shall be a class B misdemeanor.

10-03A04. LICENSE AND RENEWAL. Any person desiring to obtain, renew or transfer a license shall make and file an application for such license with the commission. The application shall be made on a form approved by the Chief of Police and made available through the office of the City Auditor. In addition to the information required on the application form, the commission, in its discretion, may require such other information as it deems

necessary in determining whether a license should be issued to the applicant.

The holder of an existing license issued pursuant to the provisions of this chapter who desires to renew said license for another license year, shall not be required to make and file a new application under this section but shall make and file a renewal application under the provisions of this section which shall require the payment of the renewal fee and shall include an affidavit indicating the current name and address of the licensee, and if said licensee is a corporation, the names and addresses of the resident manager, all corporate officers, and all shareholders holding more than 5% of the outstanding stock of the corporation, and such other information as the city may require. The renewal application and affidavit shall be on a form to be prescribed by the Chief of Police made available through the City Auditor's office.

The application for a new license or renewal of a license shall require that the applicant agrees to provide the police department with the records required by §10-0310A in a format, including electronically transmitted digital data, as required by the police department.

The Chief of Police shall investigate the facts stated in the application filed with the commission and shall report the results of the investigation to the commission prior to the hearing on said application. Said investigation and report shall include the character, reputation, fitness of the applicant to hold a license, any other pertinent information and the recommendation of the Chief of Police as to whether or not such license should be granted. In addition, the commission may request and consider such other recommendations and reports of other city officials.

10-03A05. BOND. Before a license will be issued or renewed, every applicant must submit a five thousand dollar (\$5,000.00) bond on the forms provided by the Auditor's office, with sufficient sureties to be approved by the Auditor's office. All bonds must be conditioned that the principal will observe all laws in relation to secondhand dealers and will conduct business in conformity thereto, and that the principal will account for and deliver to any person legally entitled any goods which have come into the principal's hand through the principal's business under this chapter, or in lieu thereof, will pay the reasonable value in money to the person. This language shall not be construed to apply to items the principal has legally disposed of under the requirements of the

ordinance. The bond shall contain a provision that no bond may be canceled except upon thirty (30) days written notice to the Chief of Police.

Alternately, a licensee may provide proof to the Auditor's office of a separate dedicated account with a balance of \$5,000.

10-03A06. FEE FOR LICENSE AND APPLICATION FEE. The fee for issuance of a license to engage in business as a secondhand dealer shall be in such amount as shall be established by resolution of the Board of City Commissioners.

10-03A07. INVESTIGATION FEE. The fee for the investigation of +an initial application or renewal for a license to engage in business as a secondhand dealer shall be paid to the City Auditor at the time an application is submitted. The amount of the investigation fee shall be established by resolution of the Board of City Commissioners.

10-03A08. EFFECTIVE PERIOD, DENIAL, RENEWAL AND SUSPENSION OR REVOCATION. A license issued under this chapter shall be valid and effective until December 31 of the year for which the license applies. Every license issued under the provisions of this chapter shall be issued upon the understanding that such license may be revoked or suspended by the Board of City Commissioners at any time for good cause, for failure to comply with any provision of this chapter, or by any fraud, misrepresentation bribery, or false statements in the application, investigation, securing or renewing a license, or the conviction of a license holder of a violation of this chapter or any criminal conviction related to theft of property regulations or any felony conviction. Notice of such revocation or suspension must be sent to the licensee by certified mail addressed to the licensee at the address set forth in the application. The Chief of Police shall be notified of the revocation or suspension of any license. The licensee may appeal a revocation or suspension to the Board of City Commissioners and request a public hearing on such revocation or suspension.

10-03A09. ACTS PROHIBITED BY MINORS. No person under the age of 18 years shall sell or otherwise initiate a reportable transaction with any person licensed to do business under this chapter nor may any licensee participate in a reportable transaction with a person under the age of 18 years. No person under the age of 18 years shall represent to any person licensed under the provisions of this chapter that he is 18 years of age or over.

10-03A10. REQUIRED RECORDS. At the time of any reportable transaction every licensee must immediately record in English the following information by using ink or other indelible medium on forms or in a computerized record approved by the Chief of Police. Such record shall specifically include:

1. A complete and accurate description of each item including, but not limited to any trademark, identification number, serial number, model number, brand name or other identifying mark on such an item.
2. The purchase price.
3. Date, time and place the item of property was received by the licensee, and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the licensee's records.
4. Full name, current residence address and phone number, date of birth and accurate description of the person from whom the item of the property was received including sex, height, weight, race, color of eyes and color of hair.
5. The identification number and state of issue of a current state photo driver's license or state identification.
6. The signature of the person identified in the transaction.
7. Inspection of records. Transaction records must at all reasonable times be open to inspection by the police department during the licensee's business hours. Data entries shall be retained for at least three (3) years from the date of transaction.

10-03A11. DAILY REPORTS TO POLICE. Licensees must submit every reportable transaction to the police department daily in the following manner:

1. Licensees must provide to the police department all information required in §10-03A10 (A) through (E) and other required information, by transferring it from their computer to the LEADS system or, at the discretion of the Chief of Police, the Automated Pawn System. All required records must be transmitted completely and accurately each day in accordance with the standards and procedures

established by the issuing authority. If a licensee is unable to successfully transfer the required information to LEADS or, at the discretion of the Chief of Police, the Automated Pawn System, the licensee must provide the police department printed copies of all reportable transactions by 12:00 the next business day. The licensee must make all reasonable efforts to correct the problem as soon as possible.

2. Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day since the problem existed.

10-03A12. RECEIPT REQUIRED. Every licensee must provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for three (3) years. The receipt must include the information (A) through (F) identified in §10-03A10.

10-03A13. HOLDING PERIOD. Any item purchased by a licensee and defined in §10-03A02 (5) must not be sold or otherwise transferred for fourteen (14) days from the date of the transaction.

10-03A14. ARTICLES AVAILABLE FOR INSPECTION. All personal property, other valuable things, precious metals or precious gems purchased by a secondhand dealer in a reportable transaction shall be made available for inspection by city police officers during reasonable business hours.

10-03A15. POLICE ORDER TO HOLD PROPERTY.

1. Investigative hold. Whenever a law enforcement official from any agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency within seventy-two (72) hours and will remain in effect for fifteen (15) days from the date of initial notification, or until the investigative order is canceled, or until an order to hold/confiscate is issued, whichever comes first.
2. Order to hold. Whenever the Chief of Police, or the Chief's designee, notifies a licensee not to sell an

item, the item must not be sold or removed from the licensed premises until authorized to be released by the Chief or the Chief's designee. The order to hold shall expire ninety (90) days from the date it is placed unless the Chief of Police or the Chief's designee determines the hold is still necessary and notifies the licensee in writing.

3. Order to confiscate. If an item is identified as stolen or evidence in a criminal case, the Chief or Chief's designee may:
 - A. Physically confiscate and remove it from the shop, pursuant to a written order from the Chief or the Chief's designee, or
 - B. Place the item on hold or extend the hold as provided in subsection B above, and leave it in the shop.

When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation.

When an order to hold/confiscate is no longer necessary, the Chief of Police, or Chief's designee shall so notify the licensee.

10-03A16. LABEL REQUIRED. Licensees must attach a label to every item at the time it is purchased or received in inventory from any reportable transaction. Permanently recorded on this label must be the number or name that identifies the transaction in the shop's records.

10-03A17. PROHIBITED ACTS:

1. No licensee may receive any goods, unless the seller presents identification in the form of a valid driver's license, a valid State of North Dakota identification card, or current valid photo driver's license or identification card issued by the state or providence of residency of the person from whom the item was received.
2. No licensee may receive any item of property that possesses an altered or obliterated serial number or

operation identification number or any item of property that has had its serial number removed.

3. No person may sell or consign any article of property not their own; nor shall any person sell or consign the property of another, whether with permission or without; nor shall any person sell or consign any article of property in which another has a security interest; with any licensee.
4. No person seeking to sell or consign any article of property with any licensee shall give a false or fictitious name; nor give a false date of birth; nor give a false or out of date address of residence or telephone number; nor present a false or altered identification, or the identification of another; to any licensee.

10-03A18. RESERVED FOR FUTURE USE.

(Repealed by Ord. 961, Sec. 11 (2013))

CHAPTER 10-04

SUNDAY OPENING - FOOD STORES

SECTIONS:

10-0401. Opening Food Stores on Sunday.

10-0401. OPENING FOOD STORES ON SUNDAY. Food stores may be operated on Sunday as provided in Subsection 30 of Section 12.1-30-03 of the North Dakota Century Code, without limitation as to the number of employees which may work at any one time on a Sunday.

Source: Ord. No. 388, Sec. 1 (1989)

CHAPTER 10-05

CITY LODGING TAX

(Source: Ord. 763, Sec. 1, 2005)

SECTIONS:

- 10-0501. Definitions
- 10-0502. Tax on Gross Receipts
- 10-0503. Collection of Tax
- 10-0504. Tax Receipts - Utilization
- 10-0505. Establishment of A New Visitor's Committee
- 10-0506. Budget
- 10-0506.1 Budget
- 10-0507. Failure to Comply - Penalty

10-0501. DEFINITIONS.

1. "Gross receipts" shall mean receipts of retailers for the leasing or renting, for periods of less than thirty (30) consecutive calendar days or one month, of hotel, motel, or tourist court accommodations within the corporate limits of the City of West Fargo.
2. "Retailer" shall mean any person, firm or corporation in the business of leasing or renting hotel, motel or tourist court accommodations for periods of thirty (30) or less consecutive calendar days or one month.
3. "Visitor's Promotion Fund" shall be comprised of the funds created by collection of the two percent (2%) tax pursuant to Section 40-57.3-01 of the North Dakota Century Code, less any amount which may be retained by the state for the collection of such tax.
4. "Visitor's Promotion Capital Construction Fund" shall be comprised of the funds created by collection of the one percent (1%) tax pursuant to Section 40-57.3-01.1 of the North Dakota Century Code, less any amount which may be retained by the state for the collection of such tax.

10-0502. TAX ON GROSS RECEIPTS. A tax of two percent (2%) pursuant to Section 40-57.3-01 of the North Dakota Century Code is hereby imposed upon gross receipts as defined herein. A tax of one percent (1%) pursuant to Section 40-57.3-01.1 of the North Dakota Century Code is hereby imposed upon gross receipts as defined herein. Said tax shall be in addition to the state sales tax on

retail accommodations provided in Chapter 57-39.2 of the North Dakota Century Code.

10-0503. COLLECTION OF TAX. The tax hereby imposed shall be due and payable at the same time the retailer is required to file a return under Chapter 57-39.2 of the North Dakota Century Code, and shall be collected and administered by the City of West Fargo under its Home Rule Charter in accordance with the provisions of state law.

Source: Ord. 956, Sec. 1 (2013)

10-0504. TAX RECEIPTS - UTILIZATION.

1. Visitor's Promotion Fund. There is hereby created a fund to be known as the Visitor's Promotion Fund, and all taxes collected pursuant to the two percent (2%) tax pursuant to Section 40-57.3-01 of the North Dakota Century Code shall be placed in this fund and utilized for the purpose to promote, encourage and attract visitors to come to the City of West Fargo and use the travel and tourism facilities within the City.
2. Visitor's Promotion Capital Construction Fund. There is hereby created a fund to be known as the Visitor's Promotion Capital Construction Fund, and all taxes collected pursuant to the one percent (1%) tax pursuant to Section 40-57.3-01.1 of the North Dakota Century Code shall be placed in this fund and utilized for the purpose of tourism or the purchase, equipping, improving, construction, maintenance, repair, and acquisition of buildings or property consistent with visitor attraction or promotion.
3. Fargo-Moorhead Convention and Visitors Bureau. After the effective date of this ordinance, all new gross receipts shall be collected and administered by the Fargo-Moorhead Convention and Visitors Bureau pursuant to an agreement with the City of West Fargo. The members of the Board of Directors of the Fargo-Moorhead Convention and Visitors Bureau shall receive no compensation payable from the Visitor's Promotion Fund, or Visitor's Promotion Capital Construction Fund except reimbursement for necessary expenses. The monies from the gross revenues already placed into the Visitor's Promotion Fund and Visitor's Promotion Capital Construction Fund held by the City of West Fargo shall continue to be administered by the Visitors' Committee established in Section 10-0505, as

well as any new monies placed into those funds by the City of West Fargo in the future.

Source: Ord. 956, Sec. 2 (2013)

10-0505. ESTABLISHMENT OF A NEW VISITOR'S COMMITTEE. The Visitor's Committee in existence as of the date of this ordinance is hereby abolished and there is hereby created a new Visitor's Committee, which shall serve as an advisory committee to the governing body of the City in administering the proceeds from the taxes available to the City under this ordinance. The committee shall be comprised of five members, who shall have terms of four (4) years, except that two of those initially appointed shall be appointed for an initial term of two (2) years. Vacancies shall be filled in the same manner as the initial appointment. The members appointed to the Visitor's Committee by the City Commission shall come from the following groups:

1. One member of the City Commission.
2. Four members who are residents of the City of West Fargo.

Should the City Commission not find a sufficient number of volunteers from the above groups to fill the committee, the City Commission shall be free to appoint any person to fill that position or positions.

The committee each year shall prepare a proposed budget for the expenditure of the Visitor's Promotion Fund and the Visitor's Promotion Capital Construction Fund, and present that budget to the City Commission.

Source: Ord. 870, Sec. 1 (2010)

10-0506. BUDGET. The proposed budget of the Visitor's Committee shall be presented to the City Commission, which shall have the authority to approve the final budget for use of the funds in the Visitor's Promotion Fund and the Visitor's Promotion Capital Construction Fund each year. No funds shall be expended from the Visitor's Promotion Fund or the Visitor's Promotion Capital Construction Fund for a particular year until that budget has been approved by the City. After approval of the budget, the City Auditor may dispense funds from the Visitor's Promotion Fund and the Visitor's Promotion Capital Construction Fund in accordance with the budget adopted by the Commission.

10-0506.1 BUDGET. The budget for the Fargo-Moorhead Convention and Visitors Bureau for the funds received under this

Chapter shall be in accordance with State law and approved annually by the City Commission.

Source: Ord. 956, Sec. 3 (2013)

10-0507. FAILURE TO COMPLY - PENALTY. The penalties and liabilities provided in Sections 57-39.2-18 and 57-39.2-18.1 of the North Dakota Century Code shall apply to the filing of returns and the administration of the taxes imposed under this ordinance.

CHAPTER 10-06

TOBACCO PRODUCT LICENSING

Source: Ord. 997, Sec. 1 (2014)

SECTIONS:

- 10-0601. Definitions.
- 10-0602. License Required.
- 10-0603. Prohibited Sales.
- 10-0604. Administrative Remedies.

10-0601. DEFINITIONS. (Source: Ord. 1041, Sec. 4 (2015))

1. E-CIGARETTE, ELECTRONIC CIGARETTE, OR ELECTRONIC SMOKING DEVICE. Any electronic oral device, such as one composed of a heating element, battery or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe, or under any other product, name or descriptor. E-cigarette also includes any component part of such a product whether or not sold separately. E-cigarette does not include any product approved by the United States Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose.
2. INDIVIDUALLY-PACKAGED TOBACCO PRODUCTS. Any package containing only one individually-wrapped tobacco product. This definition includes, but is not limited to, single packs of cigarettes, single bags of tobacco product for rolling, and individual cans of tobacco product for chewing or sniffing.
3. PROBATIONARY PERIOD. A period of 12 months for a violation which is not within any period of probation already established by a violation of any of this section, which 12 months shall be defined as commencing on the date of the said first offense and shall extend for 12 consecutive months thereafter. If any subsequent offenses occur within the said 12-month period, the probationary period for any such subsequent offense shall extend for either the same 12 consecutive months from the date of the first offense, as described above, or for a period of 6 months from the date of the subsequent offense, whichever period would expire later. For purposes of this section, an offense is deemed to have occurred when the offense is committed, and not the date of judgment or conviction.

4. SELF-SERVICE MERCHANDISING. Any open display of tobacco products to which the public has access without the intervention of an employee of the retail establishment.
5. TOBACCO PRODUCTS. Any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, e-cigarette, electronic cigarette, or an electronic smoking device. Tobacco product also includes e-cigarettes and other electronic smoking devices, pipes and rolling papers, but does not include any product specifically approved by the U.S. Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.
6. VENDING MACHINE. Any mechanical, electric, or electronic device which, upon insertion of money, tokens, or any other form of payment, dispenses tobacco products.
7. TOBACCO USE. The use of any Tobacco Product in any form. Tobacco Use includes, but is not limited to, smoking, heating, inhaling, chewing, absorbing, dissolving or ingesting any Tobacco Product.
8. SMOKING. Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe or hookah, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette.

10-0602. LICENSE REQUIRED. No person or entity shall directly or indirectly, or by means of any device, keep for retail sale, sell at retail, or otherwise dispense any tobacco products within the City of West Fargo without a City of West Fargo tobacco product dealer's license. Any person or entity that has a state license for the sale of tobacco products issued pursuant to Chapter 57-36 of the North Dakota Century Code shall automatically be deemed to have a license issued by the City of West Fargo for the sale of tobacco products without the need for an application to the City or any action of the City of West Fargo. As long as the person or entity has a state license issued under Chapter 57-36 for the sale of tobacco products, they shall be deemed to have a license from the City of West Fargo for the sale of tobacco products, unless and until the City license is suspended or revoked pursuant to this chapter. There shall be no fee for the municipal license.

10-0603. PROHIBITED SALES.

1. No person or entity shall sell, offer for sale, give away or deliver any tobacco product to any person under the age of eighteen (18) years.
2. No person shall sell or dispense any tobacco product through the use of a vending machine except as follows:
 - a. A vending machine may be used to dispense tobacco products in an area within a factory, business, office or other place not open to the general public or to which persons under eighteen (18) years of age are not generally permitted access.
 - b. A vending machine may be used to dispense tobacco products on the premises of a licensed on-sale or off-sale intoxicating liquor establishment, including club licenses. Provided, however, that if an on-sale licensed premises is also a restaurant, a vending machine located in a portion of the premises in which minors are allowed must be operable only by activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of tokens provided by an employee of the establishment before each sale.
3. No person shall sell or dispense any tobacco product through the use of self-service merchandising methods or displays.

10-0604. ADMINISTRATIVE REMEDIES.

1. ADMINISTRATIVE FINE, SUSPENSION, OR REVOCATION. Any violation of the City's regulations relating to the issuance of a tobacco products' license or of any conditions/restrictions attached to the issuance of such license shall be cause for the imposition of an administrative fine, license suspension, and/or license revocation.

If the violation relates to the sale of tobacco products to minors by a licensee or licensee's employees, the following administrative suspensions, or revocations shall be imposed:

- a. The first such violation shall subject licensee to a written warning.
- b. The second violation within the probationary period shall subject licensee to a 3-day suspension of the license.
- c. The third violation within the probationary period shall subject licensee to a 10-day suspension of the license.

- d. Subsequent violations within the probationary period shall subject licensee to a 30-day license suspension.
 - e. If any sale of tobacco products occurs on licensee's premises during a period of suspension, the license shall be suspended for the full probationary period.
 - f. For purposes of establishing the number of offenses committed by a licensee, the licensee is deemed to have committed only one offense during any 24-hour day.
2. ADMINISTRATIVE HEARING/WAIVER. Upon receipt of information indicating that a license violation has occurred, the Police Chief or his designee shall send a license violation notice to licensee by certified mail. The license violation notice shall indicate the nature of the violation and whether such violation will result in an administrative fine, license suspension, or license revocation.
- If the proposed disposition includes a license suspension, revocation, or fine, the notice shall also indicate that licensee has the option of requesting a hearing before the City Commission prior to the license suspension, revocation, or imposition of fine, or waiving such hearing and accepting the disposition described in the license violation notice. The licensee shall file a written request for a hearing within ten (10) days of the date specified in the license violation notice, or licensee shall be deemed to have waived its right to a hearing. Upon receipt of a hearing request, the Police Chief or his designee shall schedule a hearing before the City Commission at the earliest opportunity and shall send a hearing notice to licensee by certified mail.
3. CLERK PENALTIES. Any employee of a license holder who is in violation of the restriction attached to a tobacco product license shall be subject to an administrative fine of Fifty and no/100 Dollars (\$50.00).

CHAPTER 10-07

Repealed by Ordinance No. 1072, Sec. 1 (2017)

RESERVED FOR FUTURE USE.

CHAPTER 10-08

Repealed by Ordinance No. 1103, Sec. 1 (2017)

RESERVED FOR FUTURE USE

(Source: Ord. 696, Sec. 1 [2003])

CHAPTER 10-09
(Source: Ord. 696, Sec. 1 [2003])

DEAD ANIMALS, BONES, CARCASSES, FURS, AND HIDES

Section:

- 10-0901. Dead animals, bones, carcasses not to be brought in or stored in City--Exception.
- 10-0902. Requirements of warehouse or storage room where carcasses kept.
- 10-0903. Trucks containing carcasses--Standing on streets over four hours prohibited.
- 10-0904. Trucks containing carcasses--Unloading restrictions.
- 10-0905. Skinning or storing in authorized warehouse required.
- 10-0906. Commercial enterprises to abide by regulations.
- 10-0907. Time during which dead animals and carcasses may be kept.
- 10-0908. Storage and skinning not permitted when prohibited by zoning ordinances.
- 10-0909. Flushing and cleaning floor required.
- 10-0910. Hides and furs not to be cured or stored outside of buildings.
- 10-0911. "Bones" defined--Storage.
- 10-0912. Hide and fur houses or business of storing or skinning animals as public nuisance.
- 10-0913. Repeal of conflicting ordinances.
- 10-0914. Penalty for violation of Chapter.

10-0901. DEAD ANIMALS, BONES, CARCASSES NOT TO BE BROUGHT IN OR STORED IN CITY--EXCEPTION. No person, firm, or corporation shall bring into or store within the City any dead animals, bones, or carcasses of dead animals other than such as are suitable and intended for human consumption except in accordance with the provisions listed in this article.

10-0902. REQUIREMENTS OF WAREHOUSE OR STORAGE ROOM WHERE CARCASSES KEPT. No person, firm, or corporation shall be permitted to bring in, keep, or store carcasses of dead animals in the City unless such person, firm, or corporation shall have first provided a warehouse or storage room therefor, which said storage room or warehouse shall be constructed with a concrete floor and finished in such a manner as to make it impervious to moisture, said floor is to be so constructed as to slope from all parts thereof toward a drain or opening in such floor, and such opening or drain must be connected with a sanitary sewer system of the City in a manner and according to the regulations and ordinances of this City governing connections with sanitary sewers. No carcasses shall be at any

time stored or kept in or upon any premises in the City other than in such warehouse or storage room so constructed, except that frozen carcasses may be temporarily stored in any fully enclosed room in a warehouse containing a storage room constructed in the manner herein provided, or in any connecting warehouse not equipped with a concrete floor and drain, and any frozen carcasses so stored shall be removed therefrom while they are in a frozen condition. A warehouse or storage room shall, in addition to said construction, be fully enclosed on all sides and covered by a roof and shall be accessible for the delivery of such carcasses or bones through an entrance not opening through or across any street or sidewalk in the City, and provided further, that such storage room or warehouse shall be equipped with ventilators constructed so as to open through the roof or top of said building and no opening or access to said building shall at any time be left or kept so as to permit odors from such storage rooms or warehouse to escape through or across any street or sidewalk in the City, and such storage room or warehouse shall at all times be kept in a clean and sanitary condition.

10-0903. TRUCKS CONTAINING CARCASSES--STANDING ON STREETS OVER FOUR HOURS PROHIBITED. No person, firm, or corporation shall permit any trucks, wagons, or other conveyances containing the bodies or carcasses of dead animals other than those animals suitable or intended for human consumption to remain standing on any street, alley or other public way in the City for a period of more than four hours.

10-0904. TRUCKS CONTAINING CARCASSES--UNLOADING RESTRICTIONS. All trucks, wagons or other conveyances containing the bodies or carcasses of dead animals, not suitable or intended for human consumption, shall be unloaded within four hours after the arrival of such truck, wagon, or other conveyance in the City in the warehouse as defined in Section 10-0902, and no such animals or carcasses shall be unloaded across or over any street or sidewalk.

10-0905. SKINNING OR STORING IN AUTHORIZED WAREHOUSE REQUIRED. No person, firm, or corporation shall store or skin any dead animal within the City unless such storage or skinning is done within the warehouse as defined in Section 10-0902, and the carcasses of animals skinned shall not be piled on the ground or on any wooden, tile, or other form of floor except a concrete floor as hereinbefore defined and described in this article.

10-0906. COMMERCIAL ENTERPRISES TO ABIDE BY REGULATIONS. No person, firm, or corporation, while operating a commercial enterprise in the City, shall skin or permit the skinning of dead animals in the City unless such skinning is done in a warehouse and on a floor constructed as defined in Section 10-0902.

10-0907. TIME DURING WHICH DEAD ANIMALS AND CARCASSES MAY BE KEPT. Bodies of dead animals intended for skinning may be kept as

hereinbefore provided and before skinning so long as such bodies are solidly frozen and not longer. Frozen bodies may be removed from the place where stored to the place where the skinning is carried on and kept in such skinning room a sufficient length of time to thaw such bodies sufficiently for skinning, and after such animals have been skinned the carcasses thereof shall be removed outside of the corporate limits of the City within 48 hours.

10-0908. STORAGE AND SKINNING NOT PERMITTED WHEN PROHIBITED BY ZONING ORDINANCES. No storage or skinning of dead animals shall be permitted in any portion of the City where such storage and skinning is prohibited by the zoning ordinances of the City, and the storage of either dead animals before skinning or carcasses of skinned animals outside of the buildings hereinbefore described is prohibited.

10-0909. FLUSHING AND CLEANING FLOOR REQUIRED. The floor of a warehouse used for skinning or piling of skinned carcasses of dead animals shall be cleaned at least each day by flushing the same thoroughly with water and such floor shall be thoroughly cleaned.

10-0910. HIDES AND FURS NOT TO BE CURED OR STORED OUTSIDE OF BUILDINGS. No person, firm, or corporation shall place outside of any buildings any hide, fur, skin, or other portion of the body of any animal for the purpose of storing, drying, or curing the same, and all drying, curing of hides, skins and furs, and any other portion of the body of any animal shall be done inside of a building or warehouse and no such hides, skins, or furs, or other portions of the bodies of dead animals shall be stored outside of a building or warehouse.

10-0911. "BONES" DEFINED--STORAGE. The word "bones" as used in this article is defined to mean such bones of animals as are clean and free from all flesh, skin, or hair, and the keeping of bones to which are attached any flesh, skin, or hair is hereby prohibited unless such bones are stored and kept in a warehouse constructed in the same manner and with the same floor construction as defined in Section 10-0902.

10-0912. HIDE AND FUR HOUSES OR BUSINESS OF STORING OR SKINNING ANIMALS AS PUBLIC NUISANCE. The operation of hide and fur houses or places of business where animals or the bodies or carcasses of animals are brought into the City for the purpose of storing or skinning such animals is hereby declared to be a public nuisance unless the same be conducted in accordance with the provisions of this chapter.

10-0913. PENALTY FOR VIOLATION OF CHAPTER.--Every person, firm, company, or corporation violating any of the provisions of this Chapter shall, upon conviction thereof, be punished by a fine not to exceed \$700, or by imprisonment not to exceed 90 days, or by

both such fine and imprisonment, in the discretion of the court; the court to have the power to suspend said sentence and to revoke the suspension thereof. Each day any person, firm, company, or corporation shall violate any of the provisions of this Chapter shall constitute a separate offense.

CHAPTER 10-10

Repealed by Ordinance No. 1103, Sec. 2 (2017)

RESERVED FOR FUTURE USE

CHAPTER 10-11

(Source: Ord. 853, Sec. 1 [2009])

SECTIONS:

10-1101. Landing and Takeoff of Aircraft at Unauthorized Airports, Helipads, or Other Unauthorized Locations Prohibited.

10-1101. LANDING AND TAKEOFF OF AIRCRAFT AT UNAUTHORIZED AIRPORTS, HELIPADS, OR OTHER UNAUTHORIZED LOCATIONS PROHIBITED.

1. Except as otherwise permitted herein, it is unlawful for any person, operator, corporation, association or firm to cause or permit the landing or takeoff of any aircraft within the city limits of West Fargo except at an authorized helipad, airport, or other locations approved by the City Commission.
2. The prohibition under this section shall not apply to the landing or takeoff of aircraft at heliports or airports authorized by the Federal Aviation Administration or the City Commission, nor shall this section apply to the use, training, or demonstration involving aircraft for law enforcement, emergency, military or medical purposes. Further, the prohibition under this section shall not apply to such other landings or takeoffs at locations approved by the City Commission.
3. In considering any application or request for authorization or request for authorization of locations for the landing or takeoff of aircraft in the city limits, the City Commission shall consider anticipated weather conditions, the existence of obstructions, size of proposed location, the proximity of the landing and/or take off location to schools, residential areas, commercial areas or structures, proximity to roadways, proposed landing surfaces, hours of operation, noise, and any other condition existing at the location which may be hazardous to property or unreasonably endanger persons or otherwise be detrimental to the health, safety, comfort, convenience and welfare of the public.
4. Any of the landing or takeoff locations approved by the City Commission shall be utilized in conformance with the terms of any such conditions or requirements that are imposed by the City Commission in its discretion.
5. For purposes of this section, aircraft means any device that is used or intended to be used for flight in the

air, including but not limited to, airplanes, gliders, ultra-light aircraft, blimps, jets, hot air balloons, helicopter, parachutes, and unmanned aerial vehicles/unmanned aircraft systems weighing more than 55 pounds. The term "aircraft" however shall not include unmanned aerial vehicles, unmanned aircraft systems, or model aircraft which are not designed, intended nor capable of carrying persons and which weigh 55 pounds or less.

CHAPTER 10-12

DOOR-TO-DOOR SALES AND SOLICITATION

Source: Ord. 945, Sec. 1 (2013)

SECTIONS:

- 10-12-01. Declaration of Purpose and Intent.
- 10-12-02. Door-to-Door Sales Regulated.
- 10-12-03. Door-to-Door Sales; Permit Required; Application.
- 10-12-04. Issuance of Permit and Terms Thereof.
- 10-12-05. Revocation of Permits.
- 10-12-06. Sales or Solicitations Without a Permit.
- 10-12-07. Hours of Sales Solicitation.
- 10-12-08. Locations Where Solicitations Prohibited.
- 10-12-09. License to be Carried by Licensee and Exhibited on Demand.
- 10-12-10. Penalty.

10-12-01. DECLARATION OF PURPOSE AND INTENT. The Board of City Commissioners finds and declares that for the safety, privacy and protection of residents of the community and for the preservation of the rights of people conducting protected speech, it is necessary and proper that certain door-to-door solicitations in residential areas be regulated and that permissible sales or solicitations be restricted to daylight or early evening hours.

10-12-02. DOOR-TO-DOOR SALES REGULATED. The practice of going door-to-door at private residences without being requested or invited to do so for the purpose of selling or soliciting orders to sell goods, wares, merchandise, magazines, periodicals or personal services is allowed only as permitted by this chapter.

10-12-03. DOOR-TO-DOOR SALES; PERMIT REQUIRED; APPLICATION. Any person or organization desiring to engage in door-to-door sales in residential areas for the purpose of selling or soliciting orders to sell goods, wares, merchandise, magazines, periodicals or personal services, may do so provided they comply with the provisions of this chapter and obtain a permit to do so by filing an application with the Office of City Auditor. The application must be on a form provided by the City and contain the following:

- 6. Applicant's name, present residence, present home address, present business address, and current telephone number.
- 7. A general description of the applicant's business, including the goods, wares, merchandise, magazines, periodicals or personal services that will be sold in the City.

8. Applicant's residence and business address for the prior two-year period, if different from the present residence and address.
9. The name and address of the organization the applicant represents or by whom they are employed.
10. If the applicant is a business and the application is for multiple sales persons, a complete listing of the name, local address and telephone number of each sales person that will conduct sales in the City must be provided.
11. The application must include a copy of the applicant's North Dakota sales tax permit and if applicable, a copy of the applicant's transient merchant license.
12. Such other information as is required by the city.

An application for a door-to-door sales permit may not be granted if the applicant or sales persons included in the application have:

1. Pled guilty to or been found guilty of a felony offense as defined by the laws of this state, other states, or the federal government under circumstances which indicate the person poses a threat to the public interest, or has pled guilty to or been found guilty of a felony violation of NDCC Chapter 12.1-06.1, 12.1-11, 12.1-20, 12.1-22, 12.1-23 or an offense of other states or the federal government equivalent to the offenses defined in these chapters. This restriction applies for five years from the date of conviction, release from incarceration, end of a period of suspension or deferral, or expiration of parole or probation, whichever is the latest.
2. Pled guilty to or been found guilty of a misdemeanor offense in violation of NDCC Chapter 12.1-06.1, 12.1-11, 12.1-20, 12.1-22, or 12.23, or an offense of other states, the federal government, or a municipality equivalent to these offenses. This restriction applies for two years from the date of conviction, release from incarceration, end of a period of suspension or deferral, or expiration of parole or probation, whichever is the latest.
3. Been found in violation of a prior door-to-door sales permit issued by the City of West Fargo. The City Auditor shall issue or deny door to door sales permit within a reasonable time of receipt of the application. Written notice of a denial must be mailed to the applicant at the address listed as current on the

application. The notice shall contain a statement of the facts upon which the denial is based.

Denial of a door to door sales permit is subject to an appeal to the Board of City Commissioners upon written notice of appeal filed within 10 days of receipt of the notice of denial. If no appeal is filed within the time specified the action shall be final.

Upon receipt of a notice of appeal, the Board shall set a date for a hearing within 15 days of receipt of the notice of the appeal. Notice of the time and place for the hearing must be served upon the applicant personally or by certified mail at least five days before the hearing. The Board shall hear such testimony and other evidence as it deems necessary and expedient, and thereupon make its findings and decision, which shall be final.

10-12-04. ISSUANCE OF PERMIT AND TERMS THEREOF.

1. Upon approval of the application, the City Auditor shall issue a permit to the applicant.
2. The permit is to be in the form of an identification badge and must be worn and visible at all times by the applicant when selling. Duplicate permits may be issued to each employee or agent of the applicant that will engage in sales.
3. The permit must have a number on it which shall also be placed on the applicant's application file. The permit or permits must also contain the name of the applicant and the name of the sales person. Each sales person shall wear a permit in a visible manner during all sales activities.
4. The permit shall be issued for a period of one year. The permit fee shall be \$200 plus an additional \$25 for each additional sales person to be included on the permit.

10-12-05. REVOCATION OF PERMITS.

1. Permits issued under the provisions of this chapter may be revoked by the Board of City Commissioners after notice and hearing, for any of the following causes:
 - a. Fraud, misrepresentation or false statement contained in the application for a permit.
 - b. Fraud, misrepresentation or false statement made in the course of carrying on business.

- c. Any violation of this chapter.
 - d. Conviction of any crime involving theft or dishonesty.
 - e. Conducting the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
2. Notice of the hearing for revocation must be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice must be mailed, registered mail, to the address of the licensee as contained in the application, at least five days prior to the date of the hearing.

10-12-06. SALES OR SOLICITATIONS WITHOUT A PERMIT. Any person or organization desiring to engage in door-to-door solicitation in residential areas for the purpose of soliciting charitable or religious contributions, the sale of religious articles or publications or the sale of other articles if the proceeds are used for charitable or religious purposes, persons soliciting for or in support of any non-profit organization or public interest, political candidates, or persons campaigning for or against a political candidate or issue may do so without a permit providing they comply with the provisions of this chapter.

10-12-07. HOURS AND SALES OF SOLICITATION. Door-to-door sales or solicitation allowed pursuant to this chapter are permitted only between the hours of 9:00 a.m. and 5:30 p.m. and between the hours of 7:00 p.m. and 9:00 p.m. daily.

10-12-08. LOCATIONS WHERE SOLICITATION PROHIBITED. Notwithstanding the sales or solicitations allowed under this chapter, no person may solicit or sell at any private residence, business or establishment if there is placed on the premises in an observable location, a sign at least 10 square inches in size bearing the words "No Trespassing", "No Soliciting", or similar notice.

10-12-09. LICENSE TO BE CARRIED BY LICENSEE AND EXHIBITED ON DEMAND. Every transient merchant licensed under this chapter shall have the license in immediate possession at all times when engaging in or transacting any business regulated by this chapter. The licensee shall display the license when requested to do so by any court, law enforcement official, peace officer, or consumer. However, a person charged with violating this requirement may not be convicted, fined, or assessed the administration fee if the license is produced in court or to the arresting officer and if the license was valid at the time of the arrest.

10-12-10. PENALTY. Any person violating any provision of this chapter shall be guilty of a class B misdemeanor and subject to the imposition of penalties under Section 1-0211 of the Revised Ordinances of 1990 of the City of West Fargo.

CHAPTER 10-13

OPIOID TREATMENT PROGRAMS AND FACILITIES

(Source: Ord. 1027, Sec. 1 [2015])

SECTIONS:

- 10-1301. Definitions.
- 10-1302. License Required.
- 10-1303. Denial of License.
- 10-1304. Issuing License.
- 10-1305. Liability Insurance Required.
- 10-1306. Suspension and Revocation of License.
- 10-1307. Subsequent Licensing Inspection and Review.
- 10-1308. Facility and Clinical Environment
- 10-1309. Risk Management.
- 10-1310. Opioid Treatment Program Closure.
- 10-1311. Diversion Control.
- 10-1312. Limitations.
- 10-1313. Penalty.
- 10-1314. Severability Clause.

10-1301. **DEFINITIONS.** In this chapter, unless the context or subject matter otherwise requires:

1. "Accreditation" means the process of review and acceptance by an accreditation body.
2. "Accreditation body" means a body that has been approved under title 42, Code of Federal Regulations, part 8 to accredit opioid treatment programs using opioid agonist treatment medications.
3. "Certification" means the process which determines whether an opioid treatment program is qualified to provide opioid treatment under federal opioid treatment standards.
4. "Certification application" means the application filed by an opioid treatment program for purposes of obtaining certification from the State, as described in title 42, Code of Federal Regulations, part 8.
5. "Commission" means the Board of City Commissioners of the City of West Fargo, North Dakota.
6. "Critical incident" means an event that could have a negative impact on a patient, a patient's family members, or the opioid treatment program or its staff, including an event that involves the loss of life or function, a

serious physical or psychological injury, and a medication error.

7. "Federal opioid treatment standards" means the standards in title 42, Code of Federal Regulations, part 8 that are used to determine whether an opioid treatment program is qualified to engage in opioid treatment and that set forth patient admission criteria.
8. "Health care professional" means a physician assistant or an advanced practice registered nurse working under the medical director's supervision.
9. "Medical and rehabilitative services" means services, such as medical evaluations, counseling, and rehabilitative and other social programs such as vocational and educational guidance, and employment placement, intended to help a patient become and remain a productive member of society.
10. "Medical director" means a physician, licensed to practice medicine in the state, who assumes responsibility for administering all medical services performed by the opioid treatment program by whom the medical director is employed, either by performing the services directly or by delegating specific responsibility to authorized opioid treatment program physicians and health care professionals functioning under the medical director's direct supervision.
11. "Medication unit" means a facility established as part of, but geographically separate from, an opioid treatment program from which licensed private medical practitioners or pharmacists dispense or administer an opioid agonist treatment medication or collect biological specimen samples for drug testing or analysis.
12. "Opioid use disorder" reflects compulsive, prolonged self-administration of opioid substances that are used for no legitimate medical purpose or, if another medical condition is present that requires opioid treatment, that are used in doses greatly in excess of the amount needed for that medical condition.
13. "Opioid agonist treatment medication" means any opioid agonist drug that is approved by the United States Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid use disorder.

14. "Opioid" means any drug with the natural derivative of opium or synthetic psychoactive substance similar to morphine with capability to create physical dependence.
15. "Opioid treatment" means the dispensing of an opioid agonist treatment medication, and the provision of a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological or physical effects of an opioid use disorder.
16. "Opioid treatment program" means a program engaged in opioid treatment, which is:
 - a. Certified as an opioid treatment program by the state;
 - b. Registered by the United States Department of Justice, Drug Enforcement Administration under 21 U.S.C. section 823(g);
 - c. Accredited by an opioid treatment program accreditation body; and
 - d. Licensed as an opioid treatment program by the state and by the City.
17. "Patient" means an individual who undergoes treatment in an opioid treatment program.
18. "Program sponsor" means the person named in the application for certification under title 42, Code of Federal Regulations, part 8 as responsible for the operation of the opioid treatment program.

10-1302. LICENSE APPLICATION AND REQUIREMENTS.

1. An applicant for licensure to operate an opioid treatment program within the City must hold current licenses in good standing as both a substance abuse treatment program and as an opioid treatment program under the laws of the State of North Dakota. Copies of all documentation provided to the State of North Dakota in the application for a state license must be provided to the City at the time application is made to the City.
2. Prior to applying for a license to operate an opioid treatment program in the City, a prospective opioid treatment program provider must provide documentation proving the need for an opioid treatment program in the City. The potential provider's documentation must include an assessment of the following criteria:

- a. Whether other existing services and facilities of the type proposed are available or accessible to meet the needs of the population proposed to be served.
 - b. The extent to which the underserved need will be met adequately by the proposed program.
 - c. The impact of the service on the ability of low-income persons, racial and ethnic minorities, women, persons with disabilities, the elderly, and other underserved groups to obtain needed health care.
3. If the applicant is applying for licensure for the first time in the City, but operates an opioid treatment program in another city or state, the applicant must submit a copy of national and state certification and accreditation documentation, and copies of all survey reports written by national and state certification and accreditation organizations for each site where they have operated an opioid treatment program over the past six years.
4. A potential opioid treatment program must:
- a. Submit a completed application form, as provided by the City, along with any applicable application fee, as determined by the City Commission.
 - b. Submit documentation to the City showing the potential opioid treatment program provider has completed an assessment of need to determine there is a need for the proposed opioid treatment program in the City.
 - c. Provide documentation ensuring the location for the new opioid treatment program meets City land use ordinances and has been approved by the City's planning commission.
 - d. Submit a completed community relations plan developed in consultation with the City or their designees, to minimize the impact of the opioid treatment program on the business and residential neighborhoods in which the program will be located. The plan must include documentation of strategies used to:
 - (1) Obtain community input regarding the proposed location;

- (2) Address any concerns identified by the community; and
 - (3) Develop an ongoing community relations plan to address new concerns expressed by the community as the concerns arise.
 - e. Submit a plan describing reasonable transportation opportunities available to persons in need of treatment in their proposed service area to access the opioid treatment program.
 - f. Submit any additional information required by the City to assure the safe and efficient operation of the facility.
 - g. Have at least one principal officer residing within fifty (50) miles of the City.
 - h. Not have any owners, principal officers, board members, administrators, or employees under twenty-one years of age.
 - i. Provide immediate notice of changes in ownership, principal officers, board members or administrators to the City.
- 5. An opioid treatment program must conduct a criminal history record check of every individual seeking to become a principal officer, board member, agent, volunteer, or employee before the individual begins working at the facility.
 - 6. An opioid treatment program may not employ an individual who has pled guilty to, been found guilty of, or pled no contest to a felony offense.

10-1303. DENIAL OF LICENSE.

- 1. The City must deny an applicant's license:
 - a. When it fails to meet the requirements set forth in section 10-1302 of this chapter.
 - b. If the applicant has been denied, or has had revoked, the registration, accreditation, or certification required to be an opioid treatment program.
 - c. If the applicant has been denied, or has had revoked, the applicant's State-issued license as a

substance abuse treatment program or the applicant's license as an opioid treatment program.

- d. If any of the following occurred and was not resolved at a facility under the control of the applicant:
- (1) A license for a substance use disorder treatment service or health care agency was denied, revoked, or suspended in the past;
 - (2) Found to have discriminated against, demonstrated cruelty, abuse, negligence, or misconduct toward, or indifference to the welfare of, a patient;
 - (3) Misappropriation of patient property or resources;
 - (4) Failed to meet financial obligations or contracted service commitments that affected patient care;
 - (5) Has a history of noncompliance with state or federal regulations in providing substance abuse treatment;
 - (6) Refused to allow the City access to records, files, books, or portions of the premises relating to operation of the substance abuse treatment program;
 - (7) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized City representative;
 - (8) Advertised itself as licensed when a license has not been issued, or a license has been suspended or revoked; or
 - (9) Has not demonstrated the capability to provide the appropriate services to assist patients in meeting goals, including:
 - (a) Abstinence from opioids and opioid substitutes;
 - (b) Obtaining mental health treatment;
 - (c) Improving economic independence; and

- (d) Reducing adverse consequences associated with illegal use of controlled substances.
- e. If an owner, board member, principal officer, administrator, or employee of a facility under the control of the applicant:
 - (1) Has been convicted of child abuse or has been adjudicated as a perpetrator of child abuse;
 - (2) Has obtained or attempted to obtain a substance abuse treatment program license or health care provider license by fraudulent means or misrepresentation;
 - (3) Has been found guilty of, has pled guilty to, or has pled no contest to a felony offense.
 - (4) Has been found to have discriminated against, demonstrated cruelty, abuse, negligence, or misconduct toward, or indifference to the welfare of, a patient;
 - (5) Has misappropriated patient property or resources;
 - (6) Has failed to meet financial obligations or contracted service commitments that affect patient care;
 - (7) Has knowingly, or with reason to know, made a false statement of fact in the application or materials attached to the application;
 - (8) Has knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in any matter under investigation by the City; or
 - (9) Does not meet criminal background check requirements.

10-1304. ISSUING LICENSE TO OPIOID TREATMENT PROGRAM. The City may issue a license after a review of application materials, all documentation provided therewith, and an onsite visit confirms the applicant has the capacity to operate in compliance with this chapter. The City may issue an initial license for up to one year and subsequent licenses for up to two years.

10-1305. LIABILITY INSURANCE REQUIRED. The recipient of every license issued under the authority of this chapter must provide the

City Auditor, prior to issuance of the license, proof of liability insurance and professional liability insurance showing proof of coverage for at least \$1,000,000 per individual and \$1,000,000 per occurrence.

10-1306. SUSPENSION AND REVOCATION OF LICENSE - APPEAL.

1. a. The City may suspend or revoke a license for one or more of the following reasons:
 - (1) The opioid treatment program has violated any federal, state, or local opioid treatment program licensing rules or regulations;
 - (2) The opioid treatment program has procured any license, federal, state or local, through fraud or deceit;
 - (3) The state, or any state agency, has revoked any other license issued to the opioid treatment program;
 - (4) Any principal of the opioid treatment program has been found guilty of, has pled guilty to, or has pled no contest to a felony offense;
 - (5) The opioid treatment program has failed to report any important change in the information about a project as required;
 - (6) The opioid treatment program has failed to operate in accordance with the representations made in its application;
 - (7) The opioid treatment program has failed to operate in compliance with any applicable law, rule, or regulation;
 - (8) The opioid treatment program ceases to provide, or within one hundred eighty days from the date the license takes effect fails to commence to provide, the services it is authorized to provide.
- b. The City will provide the opioid treatment program written notice of which of the following actions is being taken and the basis for that action:
 - (1) Revocation of the operating license, without which the opioid treatment program may no longer operate;

- (2) Suspension of the operating license, during which time, the opioid treatment program may not continue its operations;
 - (3) Limitation placed on the license temporarily or permanently prohibiting the opioid treatment program from operating certain identified programs or services, reducing the number of beds, restricting the number or types of patients served or imposing any other limitation determined appropriate by the City.
- 2. If an inspection of the opioid treatment program identifies that an opioid treatment program is not in compliance with any of the licensure requirements set forth by the City, the City will notify the opioid treatment program in writing of the deficiencies identified.
- 3. The opioid treatment program must respond to the notification of deficiencies within the time the City sets forth in the notice. The opioid treatment program must include in its response a plan for the correction of the identified deficiencies or an explanation for its deviation from licensure requirements.
- 4. If the opioid treatment program fails to correct deficiencies or fails to provide a sufficient explanation for its failure to take action, the City may suspend or revoke the opioid treatment program's license or may require other corrective measures from the opioid treatment program. The City must notify the opioid treatment program in writing of the action being taken.
- 5. If there are reasonable grounds for the City to believe that continued operation of the opioid treatment program presents an immediate danger to the health and welfare of the public or any person receiving services, the City may immediately suspend a license.
- 6. An opioid treatment program may, upon receipt of the written notice, request a hearing before the City commission prior to any license suspension, revocation or limitation. The opioid treatment program must file a written request for hearing within ten (10) days of the date specified in the license violation notice, or licensee will be deemed to have waived its right to a hearing. Upon receipt of a hearing request, the Police Chief or his designee will schedule a hearing before the City Commission at the earliest opportunity and will send a hearing notice to licensee by certified mail.

7. If a license is revoked, the City may consider a new application for a license if the conditions upon which the revocations were based have been corrected and evidence of the corrections has been provided. A new license may be issued after the City has inspected the opioid treatment program and has found that the applicant has complied with all requirements for licensure.

10-1307. SUBSEQUENT LICENSING INSPECTION AND REVIEW. The City will conduct licensure reviews of each licensed opioid treatment program at least once per year, with or without prior notice. The City will inspect the opioid treatment program's services for compliance with all licensure requirements to determine the renewal term of the license. At the time of inspection, the opioid treatment program:

1. Must have maintained accreditation through an accreditation body;
2. Must have maintained certification from the State of North Dakota;
3. Must have maintained registration with the United States Department of Justice, Drug Enforcement Administration;
4. Must have maintained licensure as a substance abuse treatment program and as an opioid treatment program from the State of North Dakota;
5. Must not have had any of the following occur without being resolved at a facility under the control of the applicant:
 - a. The facility's license for a substance abuse treatment program or health care agency denied, revoked, or suspended and was not reinstated without restrictions or limitations;
 - b. A finding that the facility discriminated against, demonstrated cruelty, abuse, negligence, or misconduct toward, or indifference to the welfare of, a patient;
 - c. Misappropriation of patient property or resources;
 - d. Failure to meet financial obligations or contracted service commitments which affected patient care;
 - e. Noncompliance with state or federal regulations in providing substance abuse treatment;

- f. Refusal to allow the City access to records, files, books, or portions of the premises relating to operation of the substance abuse treatment program;
 - g. Willful interference with the preservation of material information or attempt to impede the work of an authorized City representative;
 - h. The facility advertised itself as licensed when a license has not been issued, or a license has been suspended or revoked; or
 - i. Failure to demonstrate the capability to provide the appropriate services to assist patients in meeting goals, including:
 - (1) Abstinence from opioids and opioid substitutes;
 - (2) Obtaining mental health treatment;
 - (3) Improving economic independence; and
 - (4) Reducing adverse consequences associated with illegal use of controlled substances.
6. Must not have had an owner, board member, principal officer, administrator or employee of a facility under the control of the applicant:
- a. Be convicted of child abuse or be adjudicated as a perpetrator of child abuse;
 - b. Has obtained or attempted to obtain a health care provider license or substance abuse treatment program license by fraudulent means or misrepresentation;
 - c. Found guilty of, plead guilty to, or plead no contest to a felony offense;
 - d. Found to have discriminated against, demonstrated cruelty, abuse, negligence, or misconduct toward, or indifference to the welfare of, a patient;
 - e. Misappropriate patient property or resources;
 - f. Fail to meet financial obligations or contracted service commitments in a way that affected patient care;

- g. Knowingly, or with reason to know, made a false statement of fact in the application or materials attached to the application, this includes any federal, state or local application;
- h. Knowingly, or with reason to know, made a false statement of fact or fail to submit necessary information in any matter under investigation by the City; or
- i. Not meet criminal background check requirements.

10-1308. FACILITY AND CLINICAL ENVIRONMENT.

- 1. Each opioid treatment program must ensure that its facility:
 - a. Has sufficient space and adequate equipment for the provision of services, including diagnosis, evaluation, and treatment of other medical, psychiatric, and behavioral disorders, if they are to be provided onsite.
 - b. Is clean and well-maintained.
- 2. Each opioid treatment program must ensure protection of patient confidentiality, in accordance with federal and state confidentiality requirements.
- 3. The program sponsor is the responsible party and assumes responsibility for all of the opioid treatment program's employees, including a practitioner, agent, or other person providing medical, rehabilitative, or counseling services at the opioid treatment program or any of its medication units. The program sponsor need not be a licensed physician but must employ a licensed physician in the position of medical director. An opioid treatment program must submit a proposed change in its program sponsor to the City for approval at least sixty days prior to the effective date of the proposed change, along with evidence of state approval.
- 4. The medical director of an opioid treatment program is responsible for monitoring and supervising all medical services provided by the program. Only a licensed physician may serve as the medical director of an opioid treatment program. If there is a change in medical director, the opioid treatment program must notify the City in writing within thirty days of the change.

10-1309. RISK MANAGEMENT.

1. Each opioid treatment program must:
 - a. Establish procedures to guard against critical incidents.
 - b. Provide a mechanism to address patient emergencies by establishing an emergency contact system, as appropriate within confidentiality requirements.
 - c. Ensure that there are staff members on duty who are trained and proficient in cardiopulmonary resuscitation, management of opioid overdose, medical emergencies, and other techniques as appropriate.
 - d. Establish and regularly update policies and procedures which address safety and security issues for patients and staff, including training for staff to handle physical or verbal threats, acts of violence, inappropriate behavior, and other escalating and potentially dangerous situations, especially those in which security guards or police need to be summoned.
2. Each opioid treatment program must create and maintain a plan for continuity of care for patients, including emergency procedures for obtaining access to medications in case of temporary program closure during service disruptions, such as those that may occur due to a major disaster or a more routine event, such as a snow storm. Each opioid treatment program must develop and maintain an electronic database consisting of client identification, emergency contact information, patient's current dose, last date medication administered, and number of take-home doses allowed as part of the patient's plan and must include a mechanism for informing each patient of the emergency arrangements. If there is a service disruption, the opioid treatment program must implement its emergency plan and must forward its database and plan to the City.
3. Each opioid treatment program must:
 - a. Develop procedures for reporting critical incidents to appropriate opioid treatment program staff, to the facility's accrediting body, and to the City within twenty-four hours of the critical incident.
 - b. Establish procedures to ensure:
 - (1) Full documentation of each critical incident.

- (2) Prompt investigation and review of the situation surrounding each critical incident.
 - (3) Implementation of timely and appropriate corrective action.
 - (4) Corrective actions are monitored until their effectiveness is assured.
 - (5) Medication is dispensed safely if a patient presents with concerning behavioral or medical signs and symptoms.
4. If a patient chooses to discontinue services against medical advice, the opioid treatment program must explain the risks of discontinuing services and offer information about, and referral to, alternative treatment options.

10-1310. OPIOID TREATMENT PROGRAM CLOSURES. If an opioid treatment program closes involuntarily or voluntarily, the opioid treatment program must:

1. Provide the City with a plan detailing procedures to ensure continuity of care for patients. The plan must include steps for the orderly transfer of patients, records, and assets to other programs or practitioners.

10-1311. DIVERSION CONTROL. Each opioid treatment program must develop:

1. A diversion control plan that demonstrates accountability to its patients and to the community. The diversion control plan should reflect the efficient use of personnel and other resources to achieve the highest quality of patient care, while reducing possibilities for diversion of controlled substances from legitimate treatment to illicit use.
2. Each opioid treatment program must inform its patients that diversion will be reported to law enforcement, and the City and must indicate how suspicions or evidence of diversion will be handled clinically. Each opioid treatment program must establish clinical procedures to minimize diversion risk to ensure appropriate treatment, such as:
 - a. Routine toxicology screens;
 - b. Pill call backs for counting;
 - c. Bubble packing of prescriptions; and

- d. Making copies of the identification numbers listed on the "strip" packaging to be available for call backs.
- 3. Each opioid treatment program must:
 - a. Provide regular and continuous staff education.
 - b. Review program policies and procedures at least annually.

10-1312. LIMITATIONS.

- 1. This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, the following conduct:
 - a. undertaking any task while under the influence of methadone, or any other drug dispensed by the opioid treatment facility;
 - b. operating, navigating, or being in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of methadone, or any other drug dispensed by the opioid treatment facility, except that a patient may not be considered to be under the influence of methadone, or any other drug dispensed by the opioid treatment facility, solely by the presence of metabolites or components of opiates in their system that appear in insufficient concentration to cause impairment.

10-1313. PENALTY. Any person, firm or corporation violating the terms of this chapter will, upon conviction thereof, be punished by a fine not to exceed \$1,500.00 or imprisonment not to exceed 30 days, or by both such fine and imprisonment, at the discretion of the Court. Provisions of Section 1-0807 will also apply. Any such penalty will be in addition to the authority of the City Commission to suspend or revoke a license pursuant to this chapter.

10-1314. SEVERABILITY CLAUSE. If any section, subsection, sentence or clause of this ordinance is for any reason held to be unconstitutional, such decision will not affect the validity of the remaining portions of the ordinance.

CHAPTER 10-14

LIVE ADULT ENTERTAINER LICENSE

Source: Ord. 982, Sec. 1, 2016

SECTIONS:

- 10-1401: Background, Intent and Purpose.
- 10-1402: Definitions.
- 10-1403: Existing Escort Services, Live Adult Entertainers, and Live Adult Entertainment Businesses.
- 10-1404: Escorts Services, Live Adult Entertainers, and Live Adult Entertainment Businesses - License required.
- 10-1405: License Term.
- 10-1406: License Renewal.
- 10-1407: Exception.
- 10-1408: Application for Live Adult Entertainers License - Contents - Renewals - Required Fees.
- 10-1409: Investigation of License Applicants.
- 10-1410: Prohibited Activities of Live Adult Entertainers.
- 10-1411: Live Adult Entertainer Personal Identification Card.
- 10-1412: Unlawful Acts.
- 10-1413: Sale or Transfer.
- 10-1414: Violation - Penalty.

10-1401: BACKGROUND, INTENT AND PURPOSE.

1. In recent years, the West Fargo Police Department has observed an increase in individuals, businesses or agencies performing adult entertainment at residences, hotels and other locations within the City of West Fargo. Previously, these activities were normally confined to adult uses and establishments, which are regulated through the City zoning ordinances.
2. The West Fargo Police Department has also investigated numerous criminal incidents involving independent adult entertainers engaging in the activities described in paragraph 1 of this section.
3. The West Fargo Police Department has conducted numerous investigations where adult entertainers were victims of crime or engaged in criminal activity including, but not limited to, prostitution, theft, extortion and drug related crimes
4. The West Fargo Police Department has investigated activities involving "escort services" and adult entertainment services that exploit and utilize minors for prostitution activities.

5. Internet sites and other media have and are used to advertise adult entertainment and escort services to citizens of West Fargo.
6. The West Fargo Police Department has conducted numerous criminal investigations in which escort services and independent adult entertainment has been used as a cover for illegal activities, including prostitution.
7. Numerous State and Federal courts have recognized that nude dancing and other adult entertainment, if conducted by consenting adults and which does not involve a fee for sexual services, is a legitimate activity.
8. The West Fargo City Commission finds that the licensing of "escort services," "live adult entertainers," and "live adult entertainer services" (hereinafter "adult entertainment services") will provide a regulatory mechanism that will serve the following objectives and goals:
 - a. Individuals and business engaging in legitimate adult entertainment services will not be restricted or burdened;
 - b. Patrons utilizing adult entertainment services will be protected from criminal activities and will be able to identify legitimate adult entertainment service providers;
 - c. Minors will be protected by a licensing system which strictly prohibits minors from engaging in or receiving adult entertainment services;
 - d. Illegal prostitution will be discouraged.

10-1402: DEFINITIONS. For the purpose of this article, the following words and phrases shall have the meanings respectively prescribed to them by this section:

1. Adult Bookstore: An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals which are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas, as set out in Section 4-429.6 of the West Fargo Municipal Code.
2. Adult Cinema: An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an

emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time, as set out in Section 4-429.6 of the West Fargo Municipal Code.

3. Adult Live Performance Theater: An enclosed building used on a regular basis for presenting live performances by singers, musicians, dancers, comedians, models, or any similar type of entertainers, which live performances are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons, as set out in Section 4-429.6 of the West Fargo Municipal Code.
4. "Escort Services" and "Live Adult Entertainer" and "Live Adult Entertainer Services" shall be used interchangeably and shall mean any person who, for consideration paid by or for the person:
 - a. Dances, strips or otherwise performs where such performances are distinguished or characterized by an emphasis to arouse or excite the patrons' sexual desires; or
 - b. Provides a service involving companionship where such companionship is distinguished or characterized by an emphasis to arouse or excite the patrons' sexual desires and where the fee for said service is based on the amount of time in companionship; or
 - c. Provides a service for a fee involving specified sexual activities or display of specified anatomical areas; or
 - d. Holds themselves out as an escort or adult entertainer by advertising such services.
5. "Live Adult Entertainment Business" means a corporate entity, business, sole proprietorship, or any other type of business or person who provides escort services or adult entertainer services, or who has employees that provide escort services or adult entertainer services, or who receives any type of fee or compensation for providing escort or adult entertainment at any location within the City of West Fargo.
6. "Nude" or "semi-nude" means a state of dress displaying specified anatomical areas.
7. "Specified anatomical area" means any of the following:

- a. Less than completely and opaquely covered: (1) human genitals, pubic region, or pubic hair (2) buttock and (3) female breast below a point immediately above the top of the areola; and
 - b. Human male genitals in a discernibly turgid state, even if completely opaquely covered.
- 8. "Specified sexual activities" means any of the following conditions:
 - a. Human genitals in a state of sexual stimulation or arousal;
 - b. Acts or representations of acts of human masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation;
 - c. Fondling or erotic touching of human genitals, pubic region, buttock or female breast;
 - d. Excretory functions as part of or in connection with any activities set forth in a. through c. above.

10-1403: EXISTING ESCORT SERVICES, LIVE ADULT ENTERTAINERS AND LIVE ADULT ENTERTAINMENT BUSINESSES. The provisions of this article shall apply to any escort service, live adult entertainer or live adult entertainment businesses in existence at the time this article takes effect. All licenses required herein shall be applied for within thirty (30) days from the effective date of this ordinance.

10-1404: ESCORT SERVICES, LIVE ADULT ENTERTAINERS AND LIVE ADULT ENTERTAINMENT BUSINESS - LICENSE REQUIRED. It shall be unlawful for any person to engage in, conduct or carry on, in or upon any location, premises or real property located or situated within the City, the activities of an escort service, live adult entertainer or live adult entertainment business, unless there has been granted to such person, business or individual a valid license, pursuant to the provisions of this article. All individuals, persons or businesses intending to provide escort services, live adult entertainment and operate live adult entertainment businesses shall apply for a live Adult Entertainer's License prior to performing the activities of an escort, escort service, live adult entertainer or operating a live adult entertainment business within the City of West Fargo. Both the business owner and the individual actually performing the escort services or adult entertainment services shall obtain an Adult Entertainer License from the City.

10-1405: LICENSE TERM. The term of a live Adult Entertainer License shall be for a period of one year; provided, however, that all licenses shall be prorated on a quarterly basis and expire on December 31 of each year unless sooner suspended or revoked.

10-1406: LICENSE RENEWAL. An Adult Entertainer License, issued pursuant to the provisions of this article, which has not been suspended or revoked, may be renewed for a period of not to exceed one year on written application to the City Auditor made at least thirty (30) days prior to the expiration date of the current valid license. The application for renewal of a license shall contain all of the information required by Section 10-1408.

10-1407: EXCEPTION. The license requirements of this chapter shall have no application and no effect upon and shall not be construed as applying to a person in the lawful business of:

1. An employment agency licensed under the laws of the State of North Dakota;
2. An adult bookstore or adult cinema provided no live escorts or adult entertainers are employed, contracted or otherwise allowed to perform on the premises.
3. Volunteers or models who pose nude or semi-nude for federal, state or locally recognized art courses and classes.
4. A licensed liquor premise which has a cabaret license issued by the City of West Fargo. Neither shall the performer be required to have a license to perform at a licensed cabaret premise.

10-1408: APPLICATION FOR LIVE ADULT ENTERTAINER LICENSE - CONTENTS - RENEWALS -REQUIRED FEES.

1. Any person, individual or business desiring to obtain a license, or renew an existing license, to operate as an escort service, live adult entertainer or live adult entertainment business, shall make application to the City Auditor. Upon submitting such application for a license, or renewal of a license, a non-refundable fee that has been established by the City's fee schedule shall be paid to the City Auditor.
2. Neither the filing of an application for a license or renewal thereof, nor payment of an application or renewal fee, shall authorize the conducting of escort services, live adult entertainer services or a live adult entertainment business until such license has been granted or renewed.
3. Each applicant for a live Adult Entertainer License, or renewal thereof, shall furnish the following information:

- a. The full true name under which the business will be conducted;
- b. The full true name and any other names used by the applicant, date of birth, and social security number;
- c. The full true name of the person or persons providing the escort services or live adult entertainment;
- d. If the applicant is a business, the full true name of any and all employees who will provide escort services or live adult entertainment;
- e. The present residence and business address and telephone numbers of the applicant;
- f. A full and complete description of the activities that the applicant intends to undertake;
- g. Acceptable written proof that the applicant, manager or other person principally in charge of the operation of the business is at least eighteen (18) years of age;
- h. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation, and the names, residence addresses, dates of birth and social security number of each of its current officers and directors. If the applicant is a partnership, the applicant shall set forth the names, residence addresses, dates of birth and social security number of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The corporation or partnership applicant shall designate one of its officers or general partners to act as its responsible managing officer. Such designated person shall complete and sign all application forms required of an individual applicant under this article, but only one application fee shall be charged;
- i. A full and detailed description of the service to be provided and/or merchandise to be sold;
- j. A list of all jurisdictions in which the applicant has been licensed to perform escort services or live adult entertainment.

- k. A list of any and all misdemeanor or felonies involving violence, drugs, or prostitution, and the jurisdiction in which they were committed.
 - l. Such other identification and/or information as the City Auditor may require in order to discover the truth of the matters required to be set forth in the application.
- 4. When any change occurs regarding the written information required by subsection 3 of this section to be included in the application, the applicant or license holder, as the case may be, shall give written notification of such change to the City Auditor within twenty-four (24) hours after such change.
- 5. The City Auditor shall have a reasonable period of time in which to review the application.
- 6. The City Auditor may deny the application if the applicant has been convicted of a misdemeanor or felony involving violence, drugs or prostitution within the last ten (10) years.
- 7. The City Auditor may grant the license, or renewal thereof, only if he/she finds that all of the following requirements have been met:
 - a. The required fees have been paid;
 - b. The application and location conforms in all respects to the provisions of this article;
 - c. The applicant has not knowingly made a material misrepresentation of fact in the application;
 - d. The applicant has fully cooperated in the investigation of the application;
 - e. The applicant, manager or other person principally in charge of the operation of the business is at least eighteen (18) years of age.
 - f. If the City Auditor does not find that all of the requirements set forth in subsections 7.a. through e. of this section have been met, the Auditor shall deny the application for the license or renewal thereof. In the event the application for the license or renewal thereof is denied by the City Auditor, written notice of such denial shall be given to the applicant, specifying the ground or grounds of such denial. Notice of denial of the application for the license, or renewal thereof,

shall be deemed to have been served if it in fact is personally served on the applicant or when deposited in the United States mail with postage prepaid and addressed to the applicant at the residence address set forth in the application for the permit or renewal thereof. Any applicant whose application for an adult entertainment business license, or renewal thereof, has been denied by the City Auditor may appeal such denial to the City Commission within 30 days of the City Auditor mailing notice of this denial.

10-1409: INVESTIGATION OF LICENSE APPLICANTS. The Police Department shall investigate all applications for a live Adult Entertainer License. The Police shall conduct a criminal background check as part of the investigation to determine if there were any violations including violence, drugs, or prostitution. In the event a national criminal investigation is required, the applicant shall be responsible for additional fees incurred in such and, upon request, provide additional information required to complete such process. All applicants are required to complete an informal consent authorizing the disclosure of all criminal history record information. Upon completion of said investigation, Police Department shall report to the City Auditor in writing its findings and recommendation.

10-1410: PROHIBITED ACTIVITIES OF LIVE ADULT ENTERTAINERS.

1. No live adult entertainment business shall employ or be operated by any person under the age of eighteen (18) years of age.
2. No person providing escort services or a live adult entertainer shall be under the age of eighteen (18) years of age.
3. No live adult entertainment business shall display or furnish any merchandise or services to any person who is under eighteen (18) years of age, except that escort services may be provided at the special instance and request of a parent, guardian or other person in lawful custody of the person upon whose behalf the escort service is engaged.

10-1411: LIVE ADULT ENTERTAINER PERSONAL IDENTIFICATION CARD. All individuals providing escort services or live adult entertainers, or employees of a business providing escort services, or employees of a live adult entertainment business engaging in live adult entertainment shall be issued a personal identification card by the City. The individual or employee shall at all times while engaged in escort services or live adult entertainment carry such card upon his or her person when engaging in escort services

or live adult entertainment and shall immediately produce the same for inspection upon request.

10-1412: UNLAWFUL ACTS. It shall be unlawful for:

1. The holder of a live Adult Entertainer License to provide escort services, offer to provide escort services or perform any live adult entertainer services for any person under eighteen (18) years of age;
2. Any person licensed as a live adult entertainer to place his or her hands upon or touch with any part of his or her body or fondle in any manner a sexual or genital part of any other person while performing escort services or adult entertainer services;
3. The holder of a live Adult Entertainer License to provide escort services, offer to escort, engage in adult entertainment, or offer to perform adult entertainment for another person without first having a valid Adult Entertainer License.

10-1413: SALE OR TRANSFER.

1. Upon the sale or transfer of any interest in any escort service or live adult entertainment business, the establishment's Adult Entertainer License shall immediately become null and void. A new application shall be made by any person, firm or entity desiring to own or operate the adult entertainment business. A fee of twenty-five dollars (\$25) shall be payable for each such application. Any application involving the sale or other transfer of any interest in an existing adult entertainment business, as well as any license which may thereafter be granted, shall be subject to the provisions of this chapter.
2. Individuals having an Adult Entertainer License shall not sell, transfer or assign any interest in said license.

10-1414: VIOLATION - PENALTY. Any person violating any provision of this chapter shall, upon conviction, be penalized in accordance with the provisions of Section 1-0211 of the West Fargo Municipal Code.

CHAPTER 10-15

TAXICABS

(Source: Ord. 1053, Sec. 1, 2016)

SECTIONS:

- 10-1501. General.
- 10-1502. License and Certificate.
- 10-1503. Reciprocity with Other Jurisdiction.
- 10-1504. Regulation of Transportation Network Company and Transportation Network Company Driver.
- 10-1505. Miscellaneous.

10-1501. GENERAL.

1. Definitions. The following words, terms and phrases, when used in this ordinance, shall have the meanings as described to them in this section, except where the context clearly indicates a different meaning:
 - A. "Applicant" means a person applying for a license under this ordinance.
 - B. "For hire" means for the remuneration or reward, paid or promised, either directly or indirectly.
 - C. "Taxi" or "Taxicab" means a motor vehicle designed to carry passengers operating on the public streets, alley, or places of the City, and accepting passengers for transportation for hire on call or demand, between such points as may be directed by the passenger.
2. Penalties. An owner, licensee, employer or employee, driver or other person who shall be found to be in violation of a provision of this ordinance shall, in addition to revocation or suspension of a license or permit, be subject upon conviction to the penalties prescribed in section 1-0211 of this code of ordinances. The City is also authorized to pursue equitable relief and secure injunctive relief to prevent ongoing or repeated violations thereof.
3. Designation. Each taxicab shall bear on the outside of each side, in letters not less than four inches in height, the business name of the operator or owner, and in addition may bear the telephone number and identifying design.

4. Reporting Accident. An accident arising from or in connection with the operation of a taxicab, which results in death or injury to any person, or in damage to any property, shall be reported forthwith to the Chief of Police.

10-1502. LICENSE AND CERTIFICATE.

1. Required: Expiration and Renewal.

- A. No person or entity shall operate or cause to be operated any taxicab in the City without first having obtained a license to operate as provided in this section.
- B. The license secured through the process set forth herein shall expire on June 1 of each year and shall be renewed by reapplication and payment of all fees, as set forth herein.

2. Application.

- A. The name, date of birth, residence, and present occupation of the person applying for such license. If the applicant is an entity, the names, dates of birth, addresses and occupations of all owners shall be given.
- B. Whether or not the applicant, or any officers, directors or shareholder or member of an applicant which is a corporation or limited liability company has been convicted of any felony or misdemeanor, including traffic violations, and if so, the date, nature of the offense and the court in which such conviction was entered; the same information shall be required from each partner, if the applicant is a partnership.
- C. The place or places within the City, or elsewhere, where the applicant proposes to establish his or her office from which he or she plans to operate and dispatch such taxicabs.
- D. The number of taxicabs operated or intended to be operated by the applicant pursuant to the provisions of this chapter.
- E. Whether applicant is the owner of the taxicab or taxicabs proposed to be operated under such license, and if not, the name of the owner thereof.

- F. Proof of insurance as described below, including that the applicant named the City as an additional named insured in the insurance policy.
- G. A statement that the licensee shall indemnify and hold harmless the City and its agents, officers, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property that arise from, or are connected with, or are caused by the willful or negligent acts or omissions of the licensee, or its agents, officers, employees, or contractors.
- H. A certification that every taxicab driver currently in or proposed to be in the applicant's employ has been subject to a criminal background check, is not a registered predatory offender, and has not been convicted of any violent offenses, including: willful homicide, sex offenses, robbery, aggravated assault, reckless endangerment, terrorizing, kidnapping, human trafficking, theft of a motor vehicle, felonious restraint, unlawful or false imprisonment, rioting, or attempt, facilitation, solicitation, or conspiracy of any of the previously-listed offenses.

3. Investigation; Issuance of License.

- A. Upon completion of the application required in Section 10-1502.2 hereof, the application shall be submitted to the Chief of Police, or his designate for review and investigation.
- B. Upon completion of review of the application and investigation as necessary to verify information supplied, and upon satisfaction as to compliance with all additional requirements of this ordinance, if the applicant satisfies all criteria set forth in this ordinance and pays the fees as set forth below, the dispatch license as required shall be issued. If an application is incomplete or cannot otherwise be approved, a written explanation shall be provided to the applicant.

4. Insurance.

- A. No license shall be issued until the applicant shall obtain and provide proof of a policy of commercial auto liability insurance issued by a responsible insurance company authorized to do business in the state, and providing insurance coverage for each and every taxicab for which a license is applied.

- B. Such policy of insurance shall insure the applicant against liability for personal injury to a passenger in such taxicab or to a member or members of the general public resulting from an accident in which such taxicab may be involved through the recklessness or negligence of its driver, operator or owner, as well as against any damage to property.
 - C. Such policy of insurance shall name the City as an additional named insured.
 - D. Such policy of insurance shall be in the amount of one hundred thousand dollars (\$100,000) for bodily injury to any (1) person; in the amount of three hundred thousand dollars (\$300,000) for injuries to more than one (1) person which were sustained in the same accident.
 - E. Such policy of insurance shall provide for continuing liability thereunder to the full amount thereof, notwithstanding any recovery thereon, and that the insolvency or bankruptcy of the insured shall not release the insurance company.
 - F. Such policy shall further provide that it shall not be canceled, surrendered, or revoked by either party except after ten (10) days' written notice to the City furnished by the insurance company issuing such policy of insurance.
 - G. It shall be unlawful for a person to operate, or cause or permit to be operated, any taxicab on the public streets of the City without having first fully complied with the provisions of this section.
- 5. Fees. An applicant to whom a license is issued shall pay at the time the application in section 10-1502.2 hereof is filed, the fee prescribed from time to time by resolution of the West Fargo City Commission.
 - 6. Non-transfer. Licenses insured under this chapter shall not be transferable. A transfer or attempted transfer thereof to another person or entity shall automatically revoke such license.
 - 7. Certificate.
 - A. At the time an application for license is filed under Section 10-1502.2 hereof, or as soon thereafter as practical, but in any event prior to the license being issued, the Applicant shall provide information regarding each individual taxi

to be used by the licensee, which information shall include the make, model, vehicle identification number, and state license plate number.

- B. Any taxi in service to a licensee shall remain subject to random inspections to ensure continuing compliance with all statutory requirements.
 - C. Any taxi placed in service by a licensee after the insurance of the license shall be inspected as set forth herein.
 - D. Each taxi to be used by a licensee upon satisfactory compliance as set forth herein shall receive a certificate issued by the City of West Fargo setting forth the fact that the taxi is in compliance with the requirements of this ordinance.
 - E. The certificate shall be placed in the taxi so as to be seen by passengers.
8. Revocation. Any taxicab license shall be void and revoked upon any time where it is found:
- A. That any information contained in the application for such license was false or misleading;
 - B. The licensee has ceased to operate any taxicab or taxicabs a dispatch business for a period of thirty (30) consecutive days.
9. Appeal. If a license becomes void and is revoked or if an application is denied, the holder of the license or the denied applicant shall have the right to appeal to the City Auditor who shall have the authority after conducting an investigation interview or hearing as to the basis of the revocation or denial, to affirm or reverse the revocation or denial in which case the license shall be reinstated or granted.

10-1503. RECIPROCITY WITH OTHER JURISDICTION.

- 1. A taxicab business licensed to do business within another jurisdiction and a taxicab driver licensed to drive taxicabs within another jurisdiction may provide taxicab services in the City so long as the business license and the taxicab driver's license are issued within reasonable conformance with the provisions of this chapter.
- 2. A taxicab business must be licensed in the City where it is located.

10-1504. REGULATION OF TRANSPORTATION NETWORK COMPANY AND TRANSPORTATION NETWORK COMPANY DRIVER. A transportation network company or transportation network company driver shall not be subject to the requirements of this ordinance provided the company and the company driver are in full compliance of NDCC chapter 39-34.

10-1505. MISCELLANEOUS.

1. Smoking prohibited. Pursuant to N.D.C.C. §§ 23-12-9 to 23-12-11 "smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this chapter.
2. Limitation on hours. No driver of any taxicab shall be on duty or drive more than twelve (12) hours in any consecutive twenty-four (24) hour period.
3. Police Orders. No driver of a taxicab shall fail, refuse or neglect to promptly obey the rules, instructions and orders of members of the police department, given by them while on duty, relative to the parking, stopping or operation of such taxicab, or to the conduct and behavior of the driver.

TITLE XI.

ANIMALS

(Ord. 734, Sec. 2, 2005)

CHAPTERS:

- 11-01 General.
- 11-02 Dangerous or Vicious Animals.
- 11-03 Animal Nuisances.
- 11-04 Restricted Non-Venomous Constricting Snakes
Possession Permit. (Source: Ord. 957, Sec. 5, 2013)
- 11-05 Records. (Source: Ord. 957, Sec. 6, 2013)
- 11-06 Bees. (Source: Ord. 1057, Sec. 1, 2016)

CHAPTER 11-01

GENERAL

SECTIONS:

- 11-0101. Definitions.
 - 11-0102. License or Permit and Registration Required.
 - 11-0103. Term of License.
 - 11-0104. Animal Kennels and Shelters.
 - 11-0105. Rabies Control.
 - 11-0106. Keeping of Fowl or Other Non-domestic Animals.
 - 11-0107. Stables and Kennels.
 - 11-0108. Shod Animals Prohibited on Walkways.
 - 11-0109. Collection of Animal Solid Waste on Public Property.
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11-0101. DEFINITIONS.

1. As used in this chapter, "owner" means any person, firm or corporation owning, harboring, or keeping an animal.
2. "At large" means off the premises of the owner and not under the control of the owner or some member of his immediate family or other authorized person either by leash, cord, or chain.
3. "Animal" includes every living animal except a member of the human race.
4. "Dangerous or Vicious Animal" is any animal that:
 - a. when unprovoked, inflicts bite(s) on any human or domestic animal either on private or public property;
 - b. has a documented history with the West Fargo Police Department or other public agency of biting or attacking any human or domestic animal;
 - c. has a known propensity, tendency, or disposition to attack, to cause injury, or otherwise threaten or endanger the safety of humans or domestic animals;
or
 - d. is not properly vaccinated.

5. "Non-Domestic Animal" is an animal commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety and welfare of people. Unless otherwise defined, such animals shall include, but are not limited to:
 - a. Any member of the large cat family (family felidae) including lions, tigers, cougars, bobcats, leopards and jaguars, but excluding commonly accepted domesticated house cats.
 - b. Any naturally wild member of the canine family (family canidae) including wolves, foxes, coyotes, dingoes, and jackals, but excluding commonly accepted domesticated dogs.
 - c. Any crossbreeds such as the crossbreeds between a wolf and a dog, unless the crossbreed is commonly accepted as a domesticated house pet.
 - d. Any member of or relative of the rodent family including any skunk (whether or not de-scented), raccoon, squirrel, or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets.
 - e. Any poisonous, venomous, constricting, or inherently dangerous member of the reptile or amphibian families, including rattlesnakes, restricted non-venomous constricting snakes, pit vipers, crocodiles, and alligators.
 - f. Any other animal which is not explicitly listed above, but which can be reasonably defined by the terms of this subpart, including but not limited to bears, deer, monkeys and game fish.
6. "Restricted non-venomous constricting snake" include the following non-venom producing constricting snakes:
 - a. Green anacondas;
 - b. Yellow anacondas;
 - c. Reticulated pythons;
 - d. Indian pythons;

- e. Burmese pythons;
- f. North African rock pythons;
- g. South African rock pythons;
- h. Amethystine pythons;
- i. Boa constrictors.

Source: Ord. 957, Sec. 1 (2013)

11-0102. LICENSE OR PERMIT AND REGISTRATION REQUIRED.

1. All dogs and cats over twelve (12) weeks of age kept or maintained in the City shall be licensed and registered. Dog and cat licenses shall be issued by the Police Department upon payment of an annual license fee as set forth herein. The owner, at the time of application, shall provide information detailing owner identification, animal description and proof of recommended inoculations as prescribed by the North Dakota Board of Veterinary Medical Examiners and in the form and manner as required by the Chief of Police. The licensing provision of the section shall not apply to dogs or cats brought into the City for the purpose of participation in any dog or cat show, nor to certified service animals properly trained to assist disabled persons when such dogs are actually kept for use by blind or otherwise disabled persons for the purpose of aiding them in going from place to place or otherwise in their daily activities.
2. The fees for obtaining a license for a dog or cat, as referenced above, shall be set by resolution of the City Commission.
3. The owner or possessor of each dog or cat shall cause a collar to be placed on the neck of the dog or cat, so licensed, with a shield furnished by the City indicating the number of the license and the year of the license. This shield shall be attached at all times while the dog or cat is outdoors within the City limits.
4. Failure to license a dog or cat shall be punishable as an infraction, and shall carry a minimum penalty of at least a fine of One Hundred and no/100 Dollars (\$100.00) or ten (10) hours of community service.

5. All restricted non-venomous constricting snakes kept or maintained in the City shall require a permit and be registered. Snake permits shall be issued by the Police Department upon payment of an annual permit fee as set forth herein.
6. A permit must be obtained prior to purchasing or bringing any restricted non-venomous constricting snake into the City. The owner, at the time of application, shall provide information detailing owner identification, animal description by common and scientific name, size, proof of veterinary check and proof of implantation of microchip in each restricted non-venomous constricting snake.
7. The fees for obtaining a permit for a restricted non-venomous constricting snake, as referenced above, shall be set by resolution of the City Commission.
8. Failure to obtain a permit for a restricted non-venomous constricting snake or snakes shall be punishable as an infraction, and shall carry a minimum penalty of at least a fine of One Hundred and no/100 Dollars (\$100.00) and/or ten (10) hours of community service.

Source: Ord. 840, Sec. 1 (2009); Ord. 957, Sec. 2 (2013); Ord. 1005, Sec. 1 (2014)

11-0103. TERM OF LICENSE. The license herein provided for shall be in force from the date of issuance thereof until the 1st day of January thereafter.

Source: Ord. 840, Sec. 2 (2009)

11-0104. ANIMAL KENNELS AND SHELTERS.

1. No animal kennel or shelter shall be permitted in a residentially-zoned area within the City nor within 300 feet of a residentially-zoned area or any existing actual residence. Provided further that if the animal kennel or shelter involves the temporary or permanent outside housing or keeping of animals, that written permission must first be obtained from all owners within 300 feet of the animal kennel or shelter.
2. For purposes of this section, the following definitions shall apply:

- A. Animal kennel - is a licensed or unlicensed facility, public or private, engaged in the business of breeding, buying, selling, or boarding animals.
- B. Animal shelter - is a licensed or unlicensed facility, public or private, used to confine, keep or house at any one time more than one animal seized, lost, abandoned, or given over by owners, which animals are not intended to be "permanently owned and maintained" at the facility by the owner of the facility.
- C. Permanently owned and maintained - shall mean the person housing or keeping an animal shall have the intent of permanently keeping and owning the animal, and in cases of dogs and cats, having the animals properly licensed and maintained pursuant to the provisions of Chapter 11 of the revised ordinances of the City of West Fargo.

11-0105. RABIES CONTROL.

- 1. If a dog or cat is believed to have rabies, or has been bitten by an animal suspected of having rabies, or bites a human being, such dog or cat shall be confined on the owner's premises and only be allowed outside of an enclosure under the direct supervision of an adult, provided the owner can provide proof that the animal is currently vaccinated for rabies. If no proof of a current rabies vaccination is provided, the animal will be quarantined with a licensed veterinarian or the city pound at the expense of the owner, for a period of ten (10) days from the date of the bite or from the date the animal is suspected of having rabies. The owner shall notify the Police Chief of the fact that the dog or cat has been exposed to rabies or has bitten a human being and, if in the discretion of the Chief of Police the dog or cat is not properly confined by the owner, the Police Chief is empowered to have such dog or cat removed from the owner's premises to the local pound or local veterinarian, and there placed under observation for a period of ten (10) days at the expense of the owner.
- 2. It shall be unlawful for any person, knowing or suspecting a dog or cat to have rabies, to allow such dog or cat to be taken off of such person's premises or beyond the limits of the City without the permission of the Police Chief. Every owner, or other person, upon

ascertaining a dog or cat is rabid, shall immediately notify the Police Chief or a police officer, who shall either remove the dog or cat to the pound or summarily destroy it.

3. If the animal shows clinical signs of rabies during the period of isolation, it must be humanely destroyed immediately in a manner that preserves the brain intact, and the brain tissue shall be transferred to the proper authorities to be examined for rabies.
4. Any animal confined in the city pound under the provisions of this section shall not be released until all expenses of impoundment and related veterinary care are fully paid. Owners of any dog or cat that is to be placed in the pound or destroyed pursuant to the provisions of the above sections may request the Chief of Police to review the impoundment or decision to destroy the animal.
5. The owner or other person in charge of any dog or cat, upon demand by a police officer, must surrender the dog or cat which has bitten a human or domestic animal, or which is suspected as having been exposed to rabies, to city or state officials or to a licensed veterinarian as directed by the city or state officials. It is unlawful for an owner or other person in charge of an animal to fail or refuse to surrender the animal as required by this section. Notwithstanding any other provision of this title, any dog or cat that has bitten a human or domestic animal, or that is suspected of having rabies, may be seized by a police officer.

11-0106. KEEPING OF FOWL AND OTHER NON-DOMESTIC ANIMALS. No person shall keep, feed, or maintain fowl or other non-domestic animals of any kind within the City, except horses, swine or cattle temporarily held in shipping pens for shipment to market or elsewhere, or as otherwise permitted by the applicable Zoning Ordinances of the City of West Fargo. No person shall keep, feed, or maintain restricted non-venomous constricting snakes as defined by Chapter 11-01 of the City of West Fargo Ordinances, except as otherwise permitted by the applicable Ordinances of the City of West Fargo.

1. No person that possesses a restricted non-venomous constricting snake shall fail to post and display any of the following:

- a. On each container in which a restricted non-venomous constricting snake is confined, signs warning the public that a restricted non-venomous constricting snake is in the container;
 - b. At the main entrance to each structure where a restricted non-venomous constricting snake is confined, a sign warning the public that a restricted non-venomous constricting snake is in the structure.
2. No person shall allow a restricted non-venomous constricting snake to roam off the property where it is confined.

Source: Ord. 957, Sec. 3 (2013)

11-0107. STABLES AND KENNELS. No person shall keep within the City any pig sty, kennel, stable or other animal pen or shelter in such a manner as to create or cause any offensive or noxious smell or condition, or maintain or use any such animal pen or shelter constructed in such manner as to permit the contents of filth therein to run or wash upon the premises owned or occupied by another or upon any street or other public place.

11-0108. SHOD ANIMALS PROHIBITED OF WALKWAYS. No person shall permit a shod animal to travel on the asphalt, concrete or stone apron, on or along the sidewalk, pedestrian walkway, hiking, biking, or jogging path or on any publicly owned property unless signs permitting the travel of shod animals are displayed or during an authorized parade in the City.

11-0109. COLLECTION OF ANIMAL SOLID WASTE ON PUBLIC PROPERTY. Every person having custody or control of an animal shall be equipped to, and shall collect, said animal's solid waste when eliminated on property owned by the City of West Fargo, the West Fargo Park District, or the West Fargo School District. Any person who wishes to make a complaint regarding violations of this section must appear before the Judge of the Municipal Court and sign a complaint.

CHAPTER 11-02

DANGEROUS OR VICIOUS ANIMALS OR RESTRICTED NON-VENOMOUS CONSTRICTING SNAKES

Source: Ord. 957, Sec. 4 (2013)

SECTIONS:

- 11-0201. Animals Running at Large Prohibited.
 - 11-0202. Impounding of Animals.
 - 11-0203. Notice of Impounding.
 - 11-0204. Release of Animal.
 - 11-0205. Proceeds of Sale.
 - 11-0206. Animal Shelter.
 - 11-0207. Fees.
 - 11-0208. Breach of Shelter.
 - 11-0209. Animal Warden.
 - 11-0210. Dangerous or Vicious Animals.
 - 11-0211. Harboring Dangerous or Vicious Animals.
 - 11-0212. Restricted Non-venomous Constricting Snakes.
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11-0201. ANIMALS RUNNING AT LARGE PROHIBITED. No person who is the owner or keeper of any animal shall allow any animal to run at large in the City.

11-0202. IMPOUNDING OF ANIMALS. The police or animal warden shall impound any animal found running at large or abandoned and shall keep it until redeemed or otherwise disposed of. The police or animal warden shall have the right to go onto private property to carry out the purposes of this chapter and to deputize others to assist them.

11-0203. NOTICE OF IMPOUNDING. The police shall immediately give notice of impounding of any such animal to the owner, if known and if the owner can be found. A registry of impounded animals shall be kept with a general description of each animal. A copy of such registry shall be available at the animal shelter. Such shelter shall be open to inspection at reasonable times for owners to search for and to reclaim animals.

11-0204. RELEASE OF ANIMAL. Any impounded animal may be redeemed by the owner thereof by payment to the West Fargo Police Department of the fees hereinafter established; provided, however, that no animal shall be released from the shelter unless the owner thereof shall present proof that such animal has been immunized for rabies within the twelve (12) months preceding its impoundment. When such proof is not available, the owner may advance the cost of immunization and any expense incidental thereto, and after such

immunization has been accomplished, the animal may be redeemed and released upon payment of the fees provided. Any animal impounded shall bear current West Fargo animal license tags or such shall be purchased for said animal by the owner prior to being redeemed by the owner. After an animal has been held unredeemed at the shelter for a period of five (5) business days, it may be disposed of by the animal warden by selling, or by surrendering it to some person who will provide the animal a suitable home, or by euthanizing it.

11-0205. PROCEEDS OF SALE. The proceeds from the sale of any impounded animal or fowl, after the payment of all costs, fees and expenses, shall be paid into the City Treasury by the Chief of Police. The City Auditor, upon proper evidence of ownership, shall pay the same to the owner of the animal or fowl sold. If no owner or proper claimant appears and makes such proof within six (6) months from the time the money was received, the City Auditor shall turn the money so received into the general fund of the City, and it shall become the property of the City.

11-0206. ANIMAL SHELTER. The City shall maintain a suitable shelter for the safekeeping of animals taken up. The Chief of Police may contract with any person for the keeping, feeding and caring of such animals on such terms as they shall deem proper, or such duty may be delegated to the police or the animal warden.

11-0207. FEES. Fees to be collected for impounding of animals shall be fixed from time to time by the City Commission. To such fees may be added the reasonable cost of feeding and caring for such animal during the period of impoundment, as may be determined by the Chief of Police.

11-0208. BREACH OF SHELTER. No person other than the Chief of Police or some police officer delegated by the Chief of Police or the animal warden shall liberate any impounded animal. No person shall commit any breach of such shelter or interfere with the taking of animals by the Police or the animal warden.

11-0209. ANIMAL WARDEN. The City Commission may appoint an animal warden who shall catch and impound any animal found running at large in the City.

11-0210. DANGEROUS OR VICIOUS ANIMALS. Any animal defined as dangerous or vicious in Section 11-0101 of this Chapter must be kept under control at all times by its owner. No person shall keep or permit any dangerous or vicious animal within the City unless such animal is secured by a chain on the person's premises or muzzled to prevent it from biting. Any dangerous or vicious animal found running at large may be destroyed without attempting to impound the same.

11-0211. HARBORING DANGEROUS OR VICIOUS ANIMALS. Any animal owner or keeper whose animal has attacked a person or another domestic animal shall take such precautions as may be necessary to ensure that the animal does not roam off the owner's or keeper's premises and attack persons or animals. If a dangerous or vicious animal continues to stray from its owner's or keeper's premises and control, thereby causing a risk to persons and animals, any city police officer or the animal control officer may, by petition to a court of appropriate jurisdiction, request that the animal be taken into custody, following which the Court shall determine whether the animal is dangerous or vicious and whether its owner's or keeper's refusal or inability to restrain it constitutes a threat to the health, safety and welfare of the general public. If the Court determines that such a threat exists, it may make such orders as may be necessary to alleviate the danger, including the destruction of the animal in question. In the case of destruction ordered by the Court, the owner shall not be entitled to any compensation for the taking of the animal.

11-0212. RESTRICTED NON-VENOMOUS CONSTRICTING SNAKES. Any animal defined as a restricted non-venomous constricting snake in Section 11-0101 of this Chapter must be kept under control at all times by its owner. No person shall keep or permit any restricted non-venomous constricting snake within the City unless such animal is secured on the person's premises. Any restricted non-venomous constricting snake found at large may be destroyed without attempting to impound the same. The owner of any restricted non-venomous constricting snake must notify the Police Department immediately upon the loss or escape of the restricted non-venomous constricting snake from the owner's possession. Failure to report any lost or escaped restricted non-venomous constricting snakes shall be punishable as an infraction, and shall carry a minimum penalty of at least a fine of One Hundred and no/100 Dollars (\$100.00).

CHAPTER 11-03

ANIMAL NUISANCES

SECTIONS:

- 11-0301. Animal Noises.
- 11-0302. Habitually Barking, Crying or Howling Animal Declared Public Nuisance.
- 11-0303. Habitually Barking, Crying or Howling Animal - Procedure for Complaint.
- 11-0304. Animal Nuisances.
- 11-0305. Poisonous Animals.

11-0301. ANIMAL NOISES. No person shall keep within the City any animal which by loud and frequent barking, howling, yelping or other animal noises disturbs the peace and quiet or annoys any citizens.

11-0302. HABITUALLY BARKING, CRYING OR HOWLING ANIMAL DECLARED PUBLIC NUISANCE. No person shall keep or harbor any animal which habitually barks, cries or howls. Any such animals which habitually bark, cry or howl are hereby declared to be a public nuisance. "Habitual barking, crying or howling" shall be defined as barking, howling or crying for repeated intervals of at least three minutes with less than one minutes of interruption. Such barking, crying or howling must be audible off of the owner or keepers premises.

11-0303. HABITUALLY BARKING, CRYING OR HOWLING ANIMAL-PROCEDURE FOR COMPLAINT. Any person desiring to sign a complaint against the owner of a habitually barking, crying or howling animal must contact the West Fargo Police Department and state his or her name, address, and facts supporting the alleged nuisance. The Police Department, upon receipt of a sufficient complaint, shall then notify the person owning, harboring, or keeping the animal that a complaint has been received and that such nuisance must be abated within forty-eight (48) hours, and remain abated for a period of two (2) months. Notice shall be sufficient for purposes of this section if the alleged violator is informed orally of the complaint or if notice of the complaint is posted upon a door of the residence where the alleged violation occurred. If the animal is not quieted within the above time period, and for the prescribed time period, a formal complaint may be signed before the Municipal Judge and served upon the owner.

11-0304. ANIMAL NUISANCES. The following conditions are hereby declared to be nuisances within the meaning of this title, and no person having ownership or custody of any animal described herein shall:

1. Fail to prohibit any animal from interfering with people, automobiles or bicycles on streets or sidewalks.
2. Fail to prohibit any animal from destroying, defacing or damaging shrubbery, lawns, flowers, gardens or other property.
3. Keep any animal which kills or injures any person or domestic animal.
4. Fail to confine any female animal in heat in a closed building so that such animal cannot come into contact with another animal except for planned and supervised breeding.
5. Allow the accumulation of excrement or other waste materials from an animal which result in foul or noxious odors that are offensive to surrounding residents.

11-0305. POISONOUS ANIMALS. No person shall keep or possess within the City any poisonous animal, reptile, amphibian, fish, insect or any other animal that poses a threat to the public health and safety. Such animal may be impounded by a police officer or animal warden and disposed of in the manner determined to be in the best interest of the public health and safety.

CHAPTER 11-04

RESTRICTED NON-VENOMOUS CONSTRICTING SNAKES POSSESSION PERMIT

Source: Ord. 957, Sec. 5 (2013)

SECTIONS:

- 11-0401. Time Requirement to Apply for Permit.
- 11-0402. Permit Application Requirements.
- 11-0403. Granting Permit Conditions.
- 11-0404. Permit Renewal.
- 11-0405. Maximum Number Allowed.
- 11-0406. Public Displays.
- 11-0407. Propagation Permit.
- 11-0408. Granting Propagation Permit Conditions
- 11-0409. Propagation Permit Renewal
- 11-0410. Propagation Permit Penalty.

11-0401. TIME REQUIREMENT TO APPLY FOR PERMIT. Any person who wishes to possess a restricted non-venomous constricting snake shall obtain a possession permit under this section prior to coming into possession of the snake or snakes. An applicant need apply for only one permit regardless of the number of restricted non-venomous constricting snakes the applicant wishes to possess up to the maximum allowed by ordinance.

11-0402. PERMIT APPLICATION REQUIREMENTS. An applicant for a possession permit shall file an application for a permit with the Police Department on a form prescribed and provided by the Police Department. The application shall include all of the following:

1. The name, date of birth and address of the applicant;
2. If different from the information provided under 11-0402(1) of this section, the name and address of the location where each restricted non-venomous constricting snake(s) will be confined;
3. A description of each restricted non-venomous constricting snake, including the scientific and common names, the snake's sex, age, color, and weight, and any distinguishing marks or coloration that would aid in the identification of the snake;
4. A photograph of each restricted non-venomous constricting snake to aid in the identification of the snake;

5. A written statement from a veterinarian stating that the veterinarian is willing to provide veterinary care to an applicant's restricted non-venomous constricting snake or snakes when the care is needed and proof of implantation of a microchip in each restricted non-venomous constricting snake with a diameter of 1 3/4 or greater;
6. Any additional information required in the rules.

An applicant shall submit a fee of One Hundred Fifty and no/100 Dollars (\$150.00) with an application.

11-0403. GRANTING PERMIT CONDITIONS. A permit may be issued to an applicant only if all of the following apply:

1. The applicant is eighteen (18) years of age or older.
2. The applicant has not been convicted of or pleaded guilty to an offense related to animal cruelty or neglect.
3. The applicant has submitted a complete application that meets the requirements of this section.
4. The applicant has submitted the application fee established in this section.
5. If a permit is denied, the application fee, less the costs associated with the criminal records check, will be returned to the applicant.

11-0404. PERMIT RENEWAL. Not later than the first day of December each year, a permit holder shall apply to the Police Department, on a form prescribed and provided by the Police Department, for a renewal of the permit if the permit holder intends to retain possession of the restricted non-venomous constricting snake or snakes that are identified in the permit.

1. The permit shall be renewed if the permit holder complies with this chapter and rules and pays a renewal fee of Fifty and no/100 Dollars (\$50.00).
2. If the application for renewal of the permit is denied, the applicant shall be notified of the denial, grounds for the denial, and the person's right to an appeal.
3. If the applicant does not appeal the determination to deny the application for a permit or renewal of a permit or if the determination to deny the permit is affirmed,

not later than thirty (30) days after the decision not to appeal or after the determination is affirmed, as applicable, the person shall transfer the restricted non-venomous constricting snake or snakes that the person possess to a humane society, wildlife sanctuary, facility that is an accredited member of either the association of zoos and aquariums or the zoological association of America, or facility that is located in another state and complies with that state's applicable laws. After the transfer has occurred, the person shall submit proof to the Police Department that the restricted non-venomous constricting snake or snakes were transferred and shall specify the society, sanctuary, or facility to which the snake or snakes were transferred. The person is responsible for all costs associated with the transfer of the restricted non-venomous constricting snake or snakes.

11-0405. MAXIMUM NUMBER ALLOWED. No owner may possess more than three (3) restricted non-venomous constricting snakes unless owner has been issued a propagation permit under this section.

11-0406. PUBLIC DISPLAYS. No restricted non-venomous constricting snakes shall be displayed in public without prior approval from the Police Department. A violation of this section shall be punishable as an infraction, and shall carry a minimum penalty of at least a fine of Two Hundred Fifty and no/100 Dollars (\$250.00) or twenty five (25) hours of community service.

11-0407. PROPAGATION PERMIT. No owner may propagate the species unless the owner has obtained a propagation permit from the Police Department. The propagation permit is in addition to any other permits required under this section. An applicant for a propagation permit shall file an application for a permit with the Police Department on a form prescribed and provided by the Police Department. The application shall include all of the following:

1. The name, date of birth and address of the applicant;
2. If different from the information provided under 11-0407(1) of this section, the name and address of the location where each propagating restricted non-venomous constricting snake(s) will be confined;
3. A description of each propagating restricted non-venomous constricting snake, including the scientific and common names, the snake's sex, age, color, and weight, and any distinguishing marks or coloration that would aid in the identification of the snake;

4. A photograph of each propagating restricted non-venomous constricting snake to aid in the identification of the snake;
5. A written statement from a veterinarian stating that the veterinarian is willing to provide veterinary care to an applicant's propagating restricted non-venomous constricting snake or snakes when the care is needed and proof of implantation of a microchip in each restricted non-venomous constricting snake with a diameter of 1 3/4 inches or greater;
6. Proof that the applicant has at least two years of experience in the care of the species of restricted non-venomous constricting snake or snakes that are the subject of the application.
7. Any additional information required in the rules.
8. Except as otherwise provided in this section, an applicant for a restricted non-venomous constricting snake propagation permit shall comply with the requirements and procedures established herein.

An applicant shall submit a fee of Twenty Five and no/100 Dollars (\$25.00) with an application.

11-0408. GRANTING PROPAGATION PERMIT CONDITIONS. A permit may be issued to an applicant only if all of the following apply:

1. The applicant is eighteen (18) years of age or older.
2. The applicant has not been convicted of or pleaded guilty to a felony drug abuse offense, an offense of violence that is a felony, or an offense related to animal cruelty or neglect.
3. The applicant has submitted a complete application that meets the requirements of this section.
4. The applicant has submitted the application fee established in this section.
5. If a permit is denied, the application fee, less the costs associated with the criminal records check, will be returned to the applicant.

11-0409. PROPAGATION PERMIT RENEWAL. Not later than the first day of December each year, a propagation permit holder shall

apply to the Police Department, on a form prescribed and provided by the Police Department, for a renewal of the propagation permit if the propagation permit holder intends to propagate the restricted non-venomous constricting snake or snakes that are identified in the permit.

1. The propagation permit shall be renewed if the propagation permit holder complies with this chapter and rules and pays a renewal fee of Twenty Five and no/100 Dollars (\$25.00).
2. If the application for renewal of the propagation permit is denied, the applicant shall be notified of the denial, grounds for the denial, and the person's right to an appeal.
3. If the applicant does not appeal the determination to deny the application for a propagation permit or renewal of a propagation permit or if the determination to deny the propagation permit is affirmed, not later than thirty days after the decision not to appeal or after the determination is affirmed, as applicable, the person shall transfer the restricted non-venomous constricting snake or snakes that the person possess to a humane society, wildlife sanctuary, facility that is an accredited member of either the association of zoos and aquariums or the zoological association of America, or facility that is located in another state and complies with that state's applicable laws. After the transfer has occurred, the person shall submit proof to the Police Department that the restricted non-venomous constricting snake or snakes were transferred and shall specify the society, sanctuary, or facility to which the snake or snakes were transferred. The person is responsible for all costs associated with the transfer of the restricted non-venomous constricting snake or snakes.

11-0410. PROPAGATION PERMIT PENALTY. Failure to obtain or maintain a propagation permit shall be punishable as an infraction, and shall carry a minimum penalty of at least a fine of Two Hundred Fifty and no/100 Dollars (\$250.00) and twenty five (25) hours of community service and loss of any restricted non-venomous constricting snake permit for at least two (2) years.

CHAPTER 11-05

RECORDS

Source: Ord. 957. Sec. 6 (2013)

SECTIONS:

11-0501. Record Keeping.

11-0501. RECORD KEEPING. A person who has been issued a permit under this chapter shall maintain records of all of the following regarding each restricted non-venomous constricting snake that the permit holder possess:

1. The scientific and common names of the snake, including the species;
2. If the snake was purchased or otherwise acquired from another person, the name and address of the other person;
3. The date on which the snake was acquired, if applicable;
4. If the permit holder propagates restricted non-venomous constricting snakes, the date of birth of the snake if the snake was propagated by the permit holder;
5. The name and address of the person to whom the snake was sold or otherwise transferred, if applicable;
6. The date on which the snake died or escaped, if applicable.
7. The identification number of the microchip that is implanted in the restricted non-venomous constricting snake.

CHAPTER 11-06

BEES

Source: Ord. 1057, Sec. 1 (2016)

Sections:

- 11-0601. Definitions
 - 11-0602. Keeping of Bees Prohibited - Exception.
 - 11-0603. Penalty.
-

11-0601. DEFINITIONS.

1. "Apiary" means the site at which one or more colonies of bees are kept.
2. "Bee" means a honey-producing insect of the genus *Apis*, including all stages of its life.
3. "Beekeeper" means a person who by virtue of ownership or a lease is responsible for the maintenance of bees located in or placed in the City.
4. "Colony" means a familial group of adult bees consisting of drones, workers, and a queen.
5. "Hive" means any manmade structure that houses a colony.

11-0602. KEEPING OF BEES PROHIBITED - EXCEPTION.

1. No person shall keep, maintain, or allow to be kept any hive, apiary, or other facility for the housing of bees on or in any property in the City of West Fargo, unless the property is zoned Agricultural. Any hive, apiary, or other facility for the housing of bees must comply with the requirements set forth in the City of West Fargo's Zoning Code. A permit for the housing of bees must be obtained from the City.
2. The fees for obtaining a permit, as referenced above, will be set by resolution of the City Commission.
3. Any person wishing to obtain a permit from the City must comply with all of the provisions of N.D.C.C. § 04.1-16.

11-0603. PENALTY. Failure to comply with this chapter will be punishable as an infraction, and shall carry a minimum penalty of at least a fine of One Hundred and no/100 Dollars (\$100.00) or ten (10) hours of community service.

TITLE XII.

PUBLIC CONDUCT - OFFENSES

(Source: Ord. 602, Sec. 1 (2000))

CHAPTERS:

- 12-01. Introduction.
- 12-02. Criminal Offenses - Offenses Against Persons and Property
- 12-03. Criminal Offenses - Offenses Against Public Order, Health and Safety
- 12-04. Criminal Offenses - Possession of Marijuana
- 12-05. Criminal Offenses - Purchase of Alcoholic Beverages by Person Under 21 Years of Age
- 12-06. Sale of Tobacco to Minors and Use by Minors Prohibited (Source: Ord 634, Sec. 1, 2002; Ord. 997, Sec. 2, 2014)
- 12-07. Non-Criminal Offenses - Breach of Peace, Order, and Public Safety
- 12-08. **Reserved for Future Use.** Repealed by Ord. 1054, Sec. 2 (2017)
- 12-09. Non-Criminal Offenses - Curfew for Minors
- 12-10. RESERVED FOR FUTURE USE
- 12-11. Littering of Public Places by Contractors

CHAPTER 12-01

INTRODUCTION

SECTIONS:

- 12-0101. Introduction.
- 12-0102. Criminal Attempt.
- 12-0103. Criminal Conspiracy.
- 12-0104. Aiding Consummation of a Crime.
- 12-0105. Public Servants Permitting Escape.
- 12-0106. Criminal Contempt.
- 12-0107. Hindering Proceedings by Disorderly Conduct.
- 12-0108. Impersonating Officials.
- 12-0109. False Reports to Law Enforcement Officers.
- 12-0110. Fleeing a Peace Officer.
- 12-0111. Interference with Officers.

12-0101. INTRODUCTION. Violations of any of the offenses set forth in this Chapter shall be considered criminal in nature, classified as misdemeanors, and subject to the imposition of penalties under Section 1-0211.

Source: Ord. 829, Sec. 1 (2008)

12-0102. CRIMINAL ATTEMPT.

1. A person is guilty of a criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the offense. A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense, if it could have been committed had the attendant circumstances been as the actor believed them to be.
2. A person who engages in conduct intending to aid another to commit an offense is guilty of criminal attempt if the conduct would establish his complicity as an accomplice under North Dakota Cent. Code Section 12.1-03-01 were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense, for example, because he has a defense of justification or entrapment.
3. Criminal attempt is an offense if the crime attempted is an offense, except that whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the offense, an attempt to commit

an offense shall be punished as an infraction. Criminal attempt to commit an infraction is an infraction.

12-0103. CRIMINAL CONSPIRACY.

1. A person commits conspiracy if he agrees with one or more persons to engage in or cause conduct which, in fact, constitutes an offense or offenses prescribed by the ordinances of this city, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement or the overt act must occur within the city. The agreement need not be explicit, but may be implicit in the fact of collaboration or existence of other circumstances.
2. If a person knows or could expect that one with whom he agrees has agreed or will agree with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.
3. A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty, and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed abandoned if no overt act to effect its objectives has been committed by any conspirator during the applicable period of limitations.
4. It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.
5. Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in North Dakota Century Code Section 12.1-03-01.
6. Conspiracy shall be subject to the same penalty as that provided for the offense or offenses constituting the objective of the conspiracy.

12-0104. AIDING CONSUMMATION OF A CRIME. A person is guilty of the offense of aiding consummation of an offense against the ordinances of this city if he intentionally aids another to secrete, disguise, or convert the proceeds of the offense against the ordinances or otherwise profits from the offense.

12-0105. PUBLIC SERVANTS PERMITTING ESCAPE. A public servant concerned in official detention, as defined by North Dakota Cent.

Code Section 12.1-08-06(3), pursuant to process issued by a court, judge, or magistrate is guilty of an offense against the ordinances of this city if he negligently permits an escape.

12-0106. CRIMINAL CONTEMPT.

1. The Municipal Court has power to punish for contempt of its authority only for the following offenses:
 - a. Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
 - b. Misbehavior of any of its officers in their official transactions;
 - c. Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.
2. Except as otherwise provided, a criminal contempt proceeding under this section shall be deemed a prosecution for an offense for the purposes of North Dakota Cent. Code Chapters 12.1-01 through 12.1-05, North Dakota Cent. Code Chapter 12.1-32, and Article V of this chapter.
3. A criminal contempt proceeding under this section is not a bar to subsequent prosecution for a specific offense if the court certifies in the judgment of conviction of criminal contempt, or the order terminating the proceeding without acquittal or dismissal, that a summary criminal contempt proceeding was necessary to prevent repetition of misbehavior disruptive of an ongoing proceeding and that subsequent prosecution as a specific offense is warranted. In a subsequent prosecution, the defendant shall receive credit for all time spent in custody and any fine paid by him pursuant to the criminal contempt proceeding.
4. This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree, or command or to compensate a complainant for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usages of law and equity, including the power of detention.

12-0107. HINDERING PROCEEDINGS BY DISORDERLY CONDUCT.

1. A person is guilty of a class A misdemeanor if the person intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

2. A person is guilty of a class B misdemeanor if the person recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

12-0108. IMPERSONATING OFFICIALS.

1. A person is guilty of an offense if that person falsely pretends to be:
 - a. A public servant, other than a law enforcement officer, and acts as if to exercise the authority of such public servant.
 - a. A public servant or a former public servant and thereby obtains a thing of value.
 - a. A law enforcement officer.
2. It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred.
3. An offense under subdivision b or c of subsection 1 is a class A misdemeanor. An offense under subdivision a of subsection 1 is a class B misdemeanor.

12-0109. FALSE REPORTS TO LAW ENFORCEMENT OFFICERS. A person is guilty of an offense if he intentionally or knowingly provides or gives a false report or false information to a law enforcement officer, unless such false statement is given with the intent to falsely implicate another, or involves a false report of a crime calling for an emergency response in which case, such false report would be a Class A Misdemeanor.

12-0110. FLEEING A PEACE OFFICER. Any person, other than the driver of a motor vehicle under Section 39-10-71, North Dakota Cent. Code, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or
2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge of office.

12-0111. INTERFERENCE WITH OFFICERS. No person in the City shall resist any police or fire officer, any member of the police or fire departments, or any person duly empowered with police or fire authority, while in the discharge or apparent discharge of duty, or in any way interfere with or hinder in the discharge of duty.

CHAPTER 12-02

CRIMINAL OFFENSES - OFFENSES AGAINST PERSONS AND PROPERTY

SECTIONS:

- 12-0201. Simple Assault.
 - 12-0202. Harassment.
 - 12-0203. Definitions.
 - 12-0204. Consolidated Theft Offenses.
 - 12-0205. Theft of Property.
 - 12-0206. Theft of Services.
 - 12-0207. Theft of Property Lost, Mislaid, or Delivered by Mistake.
 - 12-0208. Thefts Punishable Under City Ordinance.
 - 12-0209. Defenses and Proof As To Theft and Related Offenses.
 - 12-0210. Theft of Cable Television Services.
 - 12-0211. Making or Uttering Slugs.
 - 12-0212. Criminal Mischief.
 - 12-0213. Criminal Trespass.
-

12-0201. SIMPLE ASSAULT.

1. It is unlawful for any person to:
 - a. Willfully causes bodily injury to another human being; or
 - b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. Consent to the conduct causing bodily injury to all persons injured by the conduct is a defense if:
 - a. The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
 - b. The conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods, and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.

3. Assent does not constitute consent, within the meaning of this ordinance if:
 - a. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor;
 - b. It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
 - c. It is induced by force, duress, or deception.

12-0202. HARASSMENT. (Source: Ord. 1026, Sec. 1 (2015))

1. A person is guilty of an offense if, with intent to frighten or harass another, the person:
 - a. Communicates in writing or by telephone a threat to inflict injury on any person, to any person's reputation, or to any property;
 - b. Makes a telephone call anonymously or in offensively coarse language;
 - c. Makes or causes to be transmitted repeated telephone calls, text messages, email communications, or other forms of electronic communication, whether or not a conversation ensues, with no purpose of legitimate communication; or
 - d. Communicates a falsehood in writing or by telephone and causes mental anguish.
2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or subsection 4. Otherwise it is a class B misdemeanor.
3. Any offense defined herein and committed by use of a telephone may be deemed to have been committed at either the place at which the telephone call or calls, text message or messages, electronic mail or other forms of electronic communication were made or at the place where the telephone call or calls, text message or messages, electronic mail or other forms of electronic communication were received.
4. A person who telephones a 911 emergency line with the intent to annoy or harass another person or who makes a false 911 report is guilty of a class A misdemeanor.

- a. Intent to annoy or harass is established by proof of one or more calls with no legitimate 911 purpose.
 - b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.
5. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, text message, or other similar means.

12-0203. DEFINITIONS. Applicable to Section 12-0204 to 12-0209.

1. "Deception" means:

- a. Creating or reinforcing a false impression, including false impressions as to fact, law, status, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not substantially perform the promise unless it is part of a continuing scheme to defraud; or
- b. Preventing another from acquiring information which would affect his judgment of a transaction; or
- c. Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or
- d. Failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events; or
- e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record; or
- f. Using a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (1) where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by

the actor is unauthorized, and (2) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or

- g. Any other scheme to defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.

2. "Deprive" means:

- a. To withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated; or
- b. To withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or
- c. To dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.

3. "Fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

4. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

5. "Obtain" means:

- a. In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another; or
- b. In relation to services, to secure performance thereof.

6. "Property" means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical

location), contract right, chose-in-action, interest in or claim to wealth, credit, or any other article or thing of value of any kind. "Property" also means real property the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property.

7. "Property of another" means property in which a person other than the actor or in which a government has an interest which the actor is not privileged to infringe without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.
8. "Receiving" means acquiring possession, control, or title, or lending on the security of the property.
9. "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.
10. "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of North Dakota Cent. Code Section 12.1-23-06.
11. "Threat" means an expressed purpose, however communicated, to:
 - a. Cause bodily injury in the future to the person threatened or to any other person; or
 - b. Cause damage to property; or
 - c. Subject the person threatened or any other person to physical confinement or restraint; or
 - d. Engage in other conduct constituting a crime; or
 - e. Accuse anyone of a crime; or

- f. Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt, or ridicule or to impair another's credit or business repute; or
- g. Reveal any information sought to be concealed by the person threatened; or
- h. Testify or provide information or withhold testimony of information with respect to another's legal claim or defense; or
- i. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action; or
- j. Bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent; or
- k. Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
- l. Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation, or personal relationship. Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or himself initiated the scheme.

12-0204. CONSOLIDATED THEFT OFFENSES.

- 1. Conduct denominated theft in Sections 12-0205 to 12-0207 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzling, obtaining money or property by false pretense, extorting, blackmailing, fraudulently converting, receiving stolen property, misappropriating public funds, swindling, and the like.
- 2. A charge of theft under Sections 12-0205 to 12-0207 which fairly apprises the defendant of the nature of the charges against him shall not be deemed insufficient

because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such charge if his conduct falls under Section 12-0205 to 12-0207, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case he must meet. Any person violating any provision of Sections 12-0205 to 12-0207 shall be guilty of a class B misdemeanor and subject to the imposition of penalties under Section 1-0211 of the Revised Ordinances of 1990 of the City of West Fargo.

SOURCE: Ord. 829, Sec. 2 (2008)

12-0205. THEFT OF PROPERTY. It is unlawful for any person to:

1. Knowingly takes or exercises unauthorized control over, or make an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
2. Knowingly obtain the property of another by deception with intent to deprive the owner thereof, or intentionally deprive another of his property by deception; or
3. Knowingly receive, retain, or dispose of property of another which has been stolen, with intent to deprive the owner thereof.

12-0206. THEFT OF SERVICES. It is unlawful for any person to:

1. Intentionally obtain services, known to be available only for compensation, by deception, false token, or other means to avoid payment for services; or
2. Have control over the disposition of services of another to which the person is not entitled, knowingly divert those services to the person's own benefit or to the benefit of another not entitled thereto.

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants, and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception.

12-0207. THEFT OF PROPERTY LOST, MISLAID, OR DELIVERED BY MISTAKE. It is unlawful for any person to:

1. Retain or dispose of property of another knowing it has been lost or mislaid; or

2. Retain or dispose of property of another knowing it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property.

and with intent to deprive the owner of it, the person fails to take readily available and reasonable measures to restore the property to a person entitled to have it.

12-0208. THEFTS PUNISHABLE UNDER CITY ORDINANCE. Theft under Sections 12-0205 to 12-0207 may be punished as an offense against the city ordinances if the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have anticipated to have been the property or services involved, does not exceed \$500, and if:

1. The theft was not committed by threat;
2. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft;
3. The defendant was not a public servant or an officer or employee of a financial institution who committed a theft in the course of his official duties;
4. The property stolen is not a firearm, ammunition, explosive or destructive device, or an automobile, aircraft, or other motor-propelled vehicle;
5. The property does not consist of any government file, record, document, or other government paper stolen from any government office or from any public servant;
6. The defendant is not in the business of buying or selling stolen property and he does not receive, retain, or dispose of the property in the course of that business;
7. The property stolen does not consist of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of the State of North Dakota;
8. The property stolen does not consist of livestock taken from the premises of the owner;
9. The property stolen does not consist of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and was not stolen to gain such access;

10. The property stolen is not a card, plate, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit, or is not a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers; or
11. The property stolen is not a prescription drug as defined in Section 43-15.3-01, NDCC.

The provisions of Section 12-0208 shall be amended automatically to conform with any subsequent amendments to Section 12-23-05, North Dakota Cent. Code, dealing with the grading of theft offenses so that Section 12-0208 shall give the City jurisdiction of all class B misdemeanor theft offenses.

Source: Ord. 906, Sec. 2 (2011); Ord. 961, Sec. 4 (2013)

12-0209. DEFENSES AND PROOF AS TO THEFT AND RELATED OFFENSES.

1. It is a defense to a prosecution under Sections 12-0204 to 12-0209 that:
 - a. The actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; or
 - b. The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term "spouse", as used in this section, includes persons living together as husband and wife.
2.
 - a. It shall be a prima facie case of theft under this chapter if it is shown that a public servant or an officer, director, agent, or employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.
 - b. It shall be prima facie evidence that the actor knows that property has been stolen if it is shown that, being a dealer, he acquired it for a consideration which he knew to be far below its reasonable value. "Dealer" means a person, whether licensed or not, who has repeatedly engaged in transactions in the type of property involved.

12-0210. THEFT OF CABLE TELEVISION SERVICES -- PENALTY. A person is guilty of a class B misdemeanor if the person:

1. Knowingly obtains or attempts to obtain cable television service from another by any means, artifice, trick, deception, or device without the payment to the cable television operator of all lawful compensation for each type of service obtained;
2. Knowingly assists or instructs any other person in obtaining or attempting to obtain any cable television service without the payment to the cable television operator of all lawful compensation for each type of service obtained or attempted to be obtained;
3. Knowingly tampers, diverts from, or connects to by any means, whether mechanical, electrical, acoustical or other means, any cables, wires, or other devices used for the distribution of cable television without authority from the cable television operator; or
4. Knowingly manufactures, imports into this state, distributes, sells, offers for sale or rental, possesses for sale, or advertises for sale, any device, plan or kit for a device, or printed circuit, designed to unlock, decode, descramble, or otherwise make intelligible any locked, encoded, scrambled, or other nonstandard signal carried by the cable television system, thereby facilitating the doing of any acts specified in subsections 1, 2, and 3.

12-0211. MAKING OR UTTERING SLUGS.

1. It is unlawful for any person to make or utter a slug or slugs which do not exceed fifty dollars in value with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with knowledge of facilitating such a deprivation by another person.
2. In this section:
 - a. "Slug" means a metal, paper, or other object which by virtue of its size, shape, or any other quality is capable of being inserted, deposited or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill, or token;
 - b. "Coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed (1) to receive a coin or bill of a certain denomination or a token made for the purpose; and (2) in return for the insertion or

deposit thereof, automatically to offer, provide, assist in providing, or permit the acquisition of property or a public or private service.

- c. "Value" of the slugs means the value of the coins, bills, or tokens for which they are capable of being substituted.

12-0212. CRIMINAL MISCHIEF. It is unlawful for any person to:

1. Willfully tamper with tangible property of another so as to endanger person or property; or
2. Willfully damage tangible property of another.

Conduct is punishable as criminal mischief under this ordinance when any pecuniary loss if intentionally caused is not in excess of one hundred dollars; if recklessly caused is not in excess of two thousand dollars; and if the damage to tangible property of another are not by means of an explosive or a destructive devise.

12-0213. CRIMINAL TRESPASS. It is unlawful for any person to:

1. Knowing that the person is not licensed or privileged to do so, enter or remain in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders; but the name of the person posting the premises must appear on each sign in legible characters; or
2. Remain upon the property of another after being requested to leave the property by a duly authorized person; but

if the place entered is a building, occupied structure, storage structure or separately secured or occupied portion thereof or is so enclosed as to manifestly exclude intruders or the person committing this offense has previously been convicted or pled guilty to a criminal trespass within two years from the date of the commission of this offense, then the offense shall be a class A misdemeanor and not within the purview of this ordinance.

CHAPTER 12-03

CRIMINAL OFFENSES - OFFENSES AGAINST PUBLIC ORDER, HEALTH AND SAFETY

SECTIONS:

- 12-0301. Engaging in a Riot.
- 12-0302. Disobedience of Public Safety Orders Under Riot Conditions.
- 12-0303. Disorderly Conduct.
- 12-0304. Defense When Conduct Consists of Speech or Other Expression.
- 12-0305. Prostitution.
- 12-0306. Discharge of Firearms or Dangerous Weapons.
- 12-0307. Possession of a Firearm at a Public Gathering.
- 12-0308. Carrying Loaded Firearms in Vehicle.
- 12-0309. Definitions, Penalties.
- 12-0310. REPEALED. Source: Ord. 991, Sec. 1 (2014)
- 12-0311. Use and Possession of Imitation Controlled Substance.
- 12-0312. Volatile Chemicals--Inhalation of Vapors Prohibited--Definitions--Penalty
- 12-0313. Indecent Exposure.
- 12-0314. Display of Objectionable Materials to Minors.
- 12-0315. Disturbance of a Public School.
- 12-0316. Surreptitious Intrusion or Interference with Privacy.

12-0301. ENGAGING IN A RIOT.

1. A person is guilty of an offense if that person engages in a riot.
2. "Riot" means a public disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.
3. A person shall be convicted under Section 12-0102 or 12-0103 of attempt or conspiracy to commit an offense under this section only if he engages in the prohibited conduct under circumstances in which there is a substantial likelihood that his conduct will imminently produce a violation of this section. Mere presence at a riot is not an offense under this section.

12-0302. DISOBEDIENCE OF PUBLIC SAFETY ORDERS UNDER RIOT CONDITIONS. A person is guilty of an offense if, during a riot as defined in Section 12-0301.2, or when one is immediately impending, the person disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed

to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.

12-0303. DISORDERLY CONDUCT. A person is guilty of violating the ordinances of this City if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by his behavior, the person:

1. Engages in fighting, or in violent, tumultuous or threatening behavior;
2. In a public place, uses abusive, insulting, or offensive language, or an abusive, insulting, or offensive gesture, under circumstances in which such language by its very utterance, or gesture, is likely to cause or provoke a disturbance or breach of the peace;
3. Makes unreasonable noise;
4. Obstructs vehicular or pedestrian traffic, or the use of a public facility;
5. Persistently follows a person in or about a public place or places;
6. While loitering in a public place for the purpose of soliciting sexual contact, said person solicits such contact;
7. Creates a hazardous, physically offensive, or seriously alarming condition by any act which serves no legitimate purpose;
8. Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property; or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offence.
9. Throws any missile in a public place or in any place where there is any person to be endangered thereby, although no injury to any person ensues; or
10. Creates, by chemical means, a noxious and unreasonable odor in a public place.

Source: Ord. 906, Sec. 3 (2011)

12-0304. DEFENSE WHEN CONDUCT CONSISTS OF SPEECH OR OTHER
EXPRESSION.

1. If conduct that would otherwise violate Section 12-0303.3 (unreasonable noise) or Section 12-0303.4 (obstructing traffic or public facility) consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.
2. The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.
3. It is a defense to prosecution under Section 12-0303.3 or 4:
 - a. That in circumstances in which this section requires an order no order was given;
 - b. That an order, if given, was manifestly unreasonable in scope; or
 - c. That an order, if given, was promptly obeyed.

12-0305. PROSTITUTION.

1. A person is guilty of the offense of prostitution if that person:
 - a. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business; or
 - b. Solicits another person with the intention of being hired to engage in sexual activity.
2. Testimony of a person against his or her spouse shall be admissible to prove offenses under this section involving that spouse's prostitution.
3. In this section:
 - a. "Sexual activity" means sexual act or sexual contact as those terms are defined in North Dakota Cent. Code Section 12.1-20-02.

- b. A "house of prostitution" is any place where prostitution is regularly carried on by a person under the control, management, or supervision of another.
- c. An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.

12-0306. DISCHARGE OF FIREARMS OR DANGEROUS WEAPONS.

- 1. Except as provided herein, it is unlawful for any person to discharge a firearm or dangerous weapon within the city limits.
- 2. This section does not apply to the lawful discharge of firearms or dangerous weapons by 1) law enforcement officers, 2) persons at an indoor or outdoor target range licensed or permitted by conditional use by the City Commission, 3) indoor target competition, which competition has been approved by the Police Department, or 4) the lawful discharge by persons in defense of a person or property.

Source: Ord. 694, Sec. 1 (2003)

12-0307. POSSESSION OF A FIREARM AT A PUBLIC GATHERING.

- 1. An individual who possesses a firearm at a public gathering. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings.
- 2. This section does not apply to:
 - a. A law enforcement officer;
 - b. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty;
 - c. A competitor participating in an organized sport shooting event;
 - d. A gun or antique show;
 - e. A participant using a blank cartridge firearm at a sporting or theatrical event;
 - f. A firearm or dangerous weapon carried in a temporary residence or motor vehicle;

- g. A student and an instructor at a hunter safety class;
- h. private security personnel while on duty;
- i. A state or federal park;
- j. An individual possessing a valid Class 1 concealed weapons license from this state or who has reciprocity under Section 62.1-04-03.1 of the North Dakota Century Code authorizing the individual to carry a dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship. If a church or other place of worship authorizes an individual to carry a concealed weapon, local law enforcement must be informed of the name of the authorized individual;
- k. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question; and
- l. A municipal court judge, a district court judge, a staff member of the office of attorney general, and a retired North Dakota law enforcement officer, if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

Source: Ord. 970, Sec. 1 (2013)

12-0308. CARRYING LOADED FIREARMS IN VEHICLE.

- 1. An individual may not keep or carry a loaded firearm in or on any motor vehicle.
- 2. This prohibition does not apply to:
 - a. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations while possessing the firearm issued to the member by the organization and while on official duty.

- b. A law enforcement officer, except while the officer is engaged in hunting or trapping activities with a rifle or shotgun.
- c. An individual possessing a valid North Dakota concealed weapons license or a valid license issued by another state authorizing the individual to carry a firearm or dangerous weapon concealed if that state permits a holder of a valid North Dakota concealed weapons license to carry a firearm or dangerous weapon concealed in that state without obtaining a similar license from that state, except while that individual is in the field engaged in hunting or trapping activities.
- d. An individual in the field engaged in lawful hunting or trapping of non-game species or furbearing animals.
- e. A security guard or private investigator properly licensed to carry firearms.
- f. An individual possessing a valid special permit issued pursuant to Section 20.1-02-05 of the North Dakota Century Code.

Source: Ord. 970, Sec. 2 (2013)

12-0309. DEFINITIONS, PENALTIES.

- 1. The definition of "firearms" and "dangerous weapons," for purposes of this Chapter, is as defined in Chapter 62.1-01 of the North Dakota Century Code.
- 2. The penalty for violations of Sections 12-0306 through 12-0308 is a class B misdemeanor.

Source: Ord. 970, Sec. 3 (2013)

12-0310. REPEALED. Source: Ord. 991, Sec. 1 (2014)

12-0311. USE AND POSSESSION OF IMITATION CONTROLLED SUBSTANCE. A person is guilty of an offense if that person uses, or possesses with intent to use, an imitation controlled substance. It is not a defense that the person believed the substance actually to be a controlled substance.

12-0312. VOLATILE CHEMICALS -- INHALATION OF VAPORS PROHIBITED -- DEFINITIONS -- PENALTY. A person is guilty of a class B misdemeanor if that person intentionally inhales the vapors of a volatile chemical in a manner designed to affect the person's central nervous system; to create or induce a condition of intoxication, hallucination, or elation; or to distort, disturb, or

change the person's eyesight, thinking process, balance, or coordination. This section does not apply to inhalations specifically prescribed for medical, dental, or optometric treatment purposes or to controlled substances described in chapter 19-03.1, North Dakota Cent. Code. For the purposes of this section, "volatile chemical" includes the following chemicals or their isomers:

1. Acetone.
2. Aliphatic hydrocarbons.
3. Amyl nitrite.
4. Butane
5. Butyl nitrite.
6. Carbon tetrachloride.
7. Chlorinated hydrocarbons.
8. Chlorofluorocarbons.
9. Chloroform.
10. Cyclohexane.
11. Diethyl ether.
12. Ethyl acetate.
13. Fluorocarbon.
14. Glycol ether inter solvent.
15. Glycol ether solvent.
16. Hexane.
17. Ketone solvent.
18. Methanol.
19. Methyl cellosolve acetate.
20. Methyl ethyl ketone.
21. Nitrous oxide.
22. Petroleum distillate.
23. Toluene.
24. Trichloroethane.
25. Trichloroethylene.
26. Xylol or xylene.

12-0313. INDECENT EXPOSURE.

1. It is unlawful for any person to knowingly expose one's penis, vulva, or anus in a public place with the intent to annoy or harass another person.
2. It is unlawful for any person to masturbate in a public place.

12-0314. DISPLAY OF OBJECTIONABLE MATERIAL TO MINORS.

1. A person is guilty of a class B misdemeanor if that person willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of

which exploits, is devoted to, or is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain.

2. As used in this section:

- a. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.
- a. "Where minors are or may be invited as a part of the general public" includes any public roadway or walkway.
- a. The above shall not be construed to include a bona fide school, college, university, museum, public library, or art gallery.

12-0315. DISTURBANCE OF A PUBLIC SCHOOL. It is unlawful for any person to:

- 1. Willfully disturb a public school that is in session;
- 2. Willfully interfere with or interrupt the proper order or management of a public school by an act of violence, boisterous conduct, or threatening language; or
- 3. Rebuke, insult, or threaten a teacher in the presence of a student.

12-0316. SURREPTITIOUS INTRUSION OR INTERFERENCE WITH PRIVACY.

- 1. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of another, the individual:
 - a. Enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another; or
 - b. Enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.

2. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of an occupant, the individual:
 - a. Surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy; or
 - b. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy.

Source: Ord. 906, Sec. 9 (2011)

CHAPTER 12-04

CRIMINAL OFFENSES - POSSESSION OF MARIJUANA

SECTIONS:

- 12-0401. Definitions.
- 12-0402. Possession of Marijuana and Drug Paraphernalia.
- 12-0403. Jurisdiction.
- 12-0404. Burden of Proof.
- 12-0405. Penalty.
- 12-0406. Procedure to Expunge Record of Conviction.

12-0401. DEFINITIONS. Source: Ord. 1102, Sec. 4 (2017)

1. "Cannabinoid" means a chemical compound that is one (1) of the active constituents of marijuana.
2. "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
3. "Medical marijuana" means a cannabinoid concentrate or a medical cannabinoid product.
4. "Medical use of marijuana" means the acquisition, use, and possession of usable marijuana to treat or alleviate a qualifying patient's debilitating medical condition.
5. "Qualifying patient" means an individual who has been diagnosed by a health care provider as having a debilitating medical condition.
6. "Usable marijuana" means a medical marijuana product or the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form. However, the term does not include the dried leaves or flowers unless authorized through a written certification and does not include a cannabinoid edible product. In the case of a registered qualifying patient who is a minor, "usable marijuana" is limited to pediatric medical marijuana.

12-0402. POSSESSION OF MARIJUANA AND DRUG PARAPHERNALIA.

1. It shall be unlawful to possess marijuana within the jurisdiction of the City of West Fargo, North Dakota,

unless permitted under Chapter 19-24.1 of the N.D.C.C. For purposes of this section, possession includes actual or constructive possession. Constructive possession shall mean the power and capability to exercise dominion and control over the marijuana.

2. It shall be unlawful to use or possess with the intent to use drug paraphernalia to ingest, inhale, or otherwise introduce marijuana into the human body, unless permitted under Chapter 19-24.1 of the N.D.C.C. Any person violating this section shall be guilty of a class B misdemeanor.

Source: Ord. 1041, Sec. 2 (2015); Ord. 1102, Sec. 5 (2017)

12-0403. JURISDICTION. The Municipal Court of the City of West Fargo shall have jurisdiction over persons possessing not more than one (1) ounce (28.35 grams) of marijuana, as defined in this chapter.

Source: Ord. 1041, Sec. 3 (2015); Ord. 1056, Sec. 1 (2016)

12-0404. BURDEN OF PROOF. In all prosecutions under this chapter involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist or the state laboratories director shall be accepted as prima facie evidence of the results of the analytical findings.

12-0405. PENALTY. Every person, firm or corporation violating any of the provisions of this article shall be guilty of a class B misdemeanor and subject to the imposition of penalties under Section 1-0211 of the Revised Ordinances of 1990 of the City of West Fargo; and the court to have power to suspend said sentence and to revoke the suspension thereof.

SOURCE: Ord. 829, Sec. 3 (2008).

12-0406. PROCEDURE TO EXPUNGE RECORD OF CONVICTION. Whenever a person pleads guilty or is found guilty of a first offense regarding the violation of this chapter, the court, upon motion, shall expunge that conviction from the record if that person is not subsequently convicted within two (2) years of the further violation of this chapter and has not been convicted of any other criminal offense.

CHAPTER 12-05

CRIMINAL OFFENSES - PURCHASE OF ALCOHOLIC BEVERAGES BY PERSON UNDER 21 YEARS OF AGE

SECTIONS:

- 12-0501. Individuals Under Twenty-One Years of Age Prohibited from Using Alcoholic Beverages or Entering Licensed Premises - Penalty. (Source: Ord. 1025, Sec. 1 [2015])
- 12-0502. Purchasing or Procuring for Persons Under 21 Years of Age Prohibited.
- 12-0503. Furnishing Money by Persons Under 21 Years of Age for Alcoholic Beverages Prohibited.
- 12-0504. Misrepresentation of Age to Gain Admission or to Purchase Alcoholic Beverages Prohibited.
- 12-0505. RESERVED FOR FUTURE USE.

12-0501. INDIVIDUALS UNDER TWENTY-ONE YEARS OF AGE PROHIBITED FROM USING ALCOHOLIC BEVERAGES OR ENTERING LICENSED PREMISES - PENALTY. Source: Ord. 1025, Sec. 1 (2015)

- 1. Except as permitted in this section and section 10-0116, an individual under twenty-one years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of an alcoholic beverage.
- 2. An individual under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except:
 - a. A restaurant if accompanied by a parent or legal guardian;
 - b. In accordance with section 10-0116;
 - c. If the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
 - d. If the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or

- e. If the individual enters the premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.
- 3. A violation of this section is a class B misdemeanor. For a violation of subsection 2, the court also shall sentence a violator to alcohol and drug education.
- 4. The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of human services for evaluation and appropriate counseling or treatment.
- 5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.
- 6. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals that may be immune for any one occurrence is five individuals.

12-0502. PURCHASING OR PROCURING FOR A PERSON UNDER 21 YEARS OF AGE PROHIBITED. It shall be unlawful for any person to purchase or procure for any person under the age of twenty-one (21) years any alcoholic beverages as defined in Section 10-0101 of the revised ordinances or to furnish or to deliver such alcoholic beverages as defined in Section 10-0101 of the revised ordinances to any person.

12-0503. FURNISHING MONEY BY PERSONS UNDER 21 YEARS OF AGE FOR ALCOHOLIC BEVERAGES PROHIBITED. It shall be unlawful for any person under the age of twenty-one (21) years to furnish money to any other person for the purpose of purchasing alcoholic beverages as defined in Section 10-0101 of the revised ordinances.

12-0504. MISREPRESENTATION OF AGE TO GAIN ADMISSION OR TO PURCHASE ALCOHOLIC BEVERAGES PROHIBITED. It shall be unlawful for any person under the age of twenty-one (21) years to make any false statement or to furnish, present, or exhibit any false or fictitious registration card or other document or evidence for the purpose of gaining admission to any place where his or her presence is prohibited or for the purpose of procuring the sale to him or

her of any alcoholic beverages as defined in Section 10-0101 of the revised ordinances.

12-0505. RESERVED FOR FUTURE USE.

(Repealed by Ordinance No. 961, Sec. 14 (2013))

CHAPTER 12-06

(Source: Ord 634, Sec. 1 [2002]; Ord. 997, Sec. 2 [2014])

SALE OF TOBACCO PRODUCTS TO MINORS AND USE BY MINORS PROHIBITED

SECTIONS:

- 12-0601. Procuring Tobacco Product for Minor.
- 12-0602. Minor Possessing Tobacco Products.
- 12-0603. Fee.
- 12-0604. Payment Procedure.
- 12-0605. Burden of Proof.
- 12-0606. Notice to Parent or Legal Guardian.
- 12-0607. Penalty for Contempt.

12-0601. PROCURING TOBACCO PRODUCT FOR MINOR. For the purpose of this section, the definitions in Section 10-0601 shall apply. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, e-cigarettes, electronic cigarettes, electronic smoking devices, snuff, or tobacco products in any other form in which it may be utilized for smoking or chewing. As used in this section, "sell" includes dispensing from a vending machine under the control of the actor.

12-0602. MINOR POSSESSING TOBACCO PRODUCTS.

1. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, e-cigarettes, electronic cigarettes, electronic smoking devices, snuff, or tobacco products in any form in which it may be utilized for smoking or chewing.
2. Subsection 1 shall not apply to an individual under eighteen years of age who may purchase and possess tobacco products as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco product retailer, or association of tobacco product retailers may also conduct compliance surveys, after coordination with the appropriate law enforcement authority.
3. Subsection 1 shall not apply to an employee less than 18 years of age employed by a licensed tobacco product dealer or distributor where said employee under the age of 18 years handles tobacco products listed in this section as part of that employee's employment.

4. Subsection 1 shall not apply if the minor's possession or use of tobacco products relates to a cultural or religious practice; including, without limitation, the use or possession of tobacco products during any religious or cultural ceremony.

12-0603. FEE. A fee of \$25 will be assessed for a minor fourteen (14) years of age or older who has been charged with an offense under Section 12-0602 for the first offense. For a second offense within a year, a fee of \$50 and attendance at a tobacco cessation program approved by the West Fargo Municipal Court will be required. For third and subsequent offenses within a year the Municipal Court may impose a fee of up to \$250 and attendance at a tobacco cessation program. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance is punishable as a contempt of court, except a minor may not be imprisoned for contempt.

12-0604. PAYMENT PROCEDURE. A minor fourteen (14) years of age or older found to have violated Section 12-0602 must pay a fee in the amount set out in Section 12-0603.

1. Any individual who has been cited for a violation of Section 12-0602 may appear before the West Fargo Municipal Court and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited fails to follow the procedures of this section, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court is the same as the fee schedule set out in Section 12-0603. For a third or subsequent violation, the individual must appear before the Judge of the Municipal Court.
4. An individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed 90 days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.
5. The failure to post bond or to pay an assessed fee, or attend a tobacco cessation class when required to do so is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.

12-0605. BURDEN OF PROOF. The prosecution must prove the commission of a cited violation under Section 12-0602 by a preponderance of the evidence.

12-0606. NOTICE TO PARENT OR LEGAL GUARDIAN. A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.

12-0607. PENALTY FOR CONTEMPT. A person adjudged guilty of contempt for failure to pay a fee or fine or to attend a tobacco cessation class when required to do so may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or attendance at a tobacco cessation class to an alternative sentence or sanction including community service.

CHAPTER 12-07

NON-CRIMINAL OFFENSES - BREACH OF
PEACE, ORDER
AND PUBLIC SAFETY

SECTIONS:

- 12-0701. **Repealed by Ordinance No. 1046, Sec. 1 (2015)**
- 12-0702. **Repealed by Ordinance No. 1046, Sec. 2 (2015)**
- 12-0703. Tampering with or Damaging Property of Public Service.
- 12-0704. Defense of Consent - Property of Another.
- 12-0705. Trespassing in Public Schools.
- 12-0706. Refrigerators Abandoned or Unattended Out of Doors.
- 12-0707. Urinating in Public.
- 12-0708. Littering and Open Burning Prohibited.
- 12-0709. Public Intoxication - Assistance.
- 12-0710. No Prosecution for Intoxication.
- 12-0711. Fireworks. Source: Ord. 991, Sec. 2 (2014)
- 12-0712. Noisy Parties and Gatherings. Source: Ord. 1054, Sec. 1 (2017)
- 12-0713. Aggressive Panhandling.

12-0701. RESERVED FOR FUTURE USE.

12-0702. RESERVED FOR FUTURE USE.

12-0703. TAMPERING WITH OR DAMAGING PROPERTY OF PUBLIC SERVICE. It is unlawful to negligently cause a substantial interruption or impairment of a public communication, transportation, supply of water, gas, power, or other public service by:

1. Tampering with or damaging the tangible property of another;
2. Incapacitating an operator of such service; or
3. Negligently damaging the tangible property of another by fire, explosive, or other dangerous means.

12-0704. DEFENSE OF CONSENT - PROPERTY OF ANOTHER. For prosecutions of criminal mischief under Section 12-0211 or tampering with or damaging a public service under Section 12-0703:

1. Whenever it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor's conduct with respect to the property.
2. Property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein.

12-0705. TRESPASSING IN SCHOOLS.

1. It is a misdemeanor for a person to enter or be found in a public or nonpublic elementary, middle, or secondary school building unless the person:
 - a. Is an enrolled student in that particular school, or an employee of the school or school district;
 - b. Has permission or an invitation from a school official to be in the building;
 - c. Is attending a school event, class, or meeting to which the person, the public, or a student's family is invited; or
 - d. Has reported the person's presence in the school building in the manner required for visitors to the school.
2. Reasonable notification of the requirements of this section shall be conspicuously posted at the entrance to every public or nonpublic elementary, middle, or secondary school building within the City of West Fargo, and no complaint for a violation of this section shall issue unless such notice is given.
3. A school principal or a school employee designated by the school principal to maintain order on school property, who has reasonable cause to believe that a person is violating this section may detain the person in a reasonable manner for a reasonable period of time pending the arrival of a peace officer. A school principal or designated school employee is not civilly or criminally liable for any action authorized under this paragraph if the person's action is based on reasonable cause.
4. A peace officer may arrest a person without a warrant if the officer has probable cause to believe the person violated this section within the preceding four hours. The arrest may be made even though the violation did not occur in the peace officer's presence.

Source: Ord. 990, Sec. 1 (2014)

12-0706. REFRIGERATORS ABANDONED OR UNATTENDED OUT OF DOORS.

1. The provisions of this ordinance shall apply to any ice box, refrigerator, freezer or ice chest, having a capacity of one and one half cubic feet or more, and any other airtight container in which a child could become entrapped and suffocate (hereinafter referred to in this

ordinance as a dangerous container). No person, firm, corporation or organization shall abandon any such refrigerator, freezer, ice box, ice chest or dangerous container any place in the city. No person shall leave any such refrigerator, freezer, ice box, ice chest or dangerous container unattended out of doors without first having removed the door or cover. The purpose of this ordinance is to prevent children from dying for lack of air as a result of being locked in such a refrigerator, ice chest, ice box, or dangerous container.

2. No refrigerator, freezer, ice chest or ice box with a capacity of one and one half cubic feet or more shall be left out of doors for the purpose of selling ice cubes, unless such device is designed so that there is no door large enough for a baby or child to enter or to be placed in the device, provided that the device may have one larger door that is locked and can be unlocked and opened only by an attendant, not by any customer.
3. In addition to the other penalties and remedies provided in this ordinance, any city officer or employee finding any freezer, refrigerator, ice box, ice chest or dangerous container covered by this ordinance unattended in any place out of doors or cover, in violation of this ordinance, shall immediately take steps to avoid the danger of a child being trapped inside. These steps shall include:
 - a. The door will be opened to see if any baby or child is inside.
 - b. If there is an owner, attendant or other person in charge at the premises, such person shall be notified that the device must be moved at once or the door or cover removed at once by removal of the hinges, latches or other such device.
 - c. If there is no owner, attendant or other person in charge at the premises, the front door or cover shall be removed by removing the hinges, latch, lock or similar devices holding the door in place. Provided, that a refrigerator held shut only by magnetism not jammed or stuck may have the hinges or latch left on temporarily if, in the opinion of the city employee or officer taking action under this ordinance, such temporary leaving of the condition creates no immediate danger to life.
 - d. If circumstances indicate that the device is abandoned, the city shall arrange to remove the same to a licensed landfill for disposal.

- e. If there is no owner, attendant or other person in charge on the premises where any action is taken under this section, the city officer or employee who took action under this section shall notify the owner, attendant or person in charge in writing as soon as possible. If the owner or attendant is unknown, or if no address is known for any owner, attendant or other person in charge, written notice shall be left on the premises where the refrigerator or other device is found to be in violation of the provisions of this ordinance.

12-0707. URINATING IN PUBLIC. It shall be unlawful to urinate or defecate on any public street, or upon any public sidewalk or in any other public place; in or on any vehicle in public or in any store, assembly hall, corridor, entryway or other place open to and used by the public, except in a restroom, and then only in a toilet or urinal or other fixture normally used for that purpose.

12-0708. LITTERING AND OPEN BURNING PROHIBITED.

1. A person may not discard and abandon any litter, furniture, or major appliances upon public property or upon private property not owned by that person, unless the property is designated for the disposal of litter, furniture, or major appliances and that person is authorized to use the property for that purpose.
2. A person may not engage in the open burning of solid waste, unless the burning is conducted in accordance with rules adopted by the department.
3. A person violating this section is guilty of an infraction for which a minimum fine of one hundred dollars (\$100) must be imposed, except if the litter discarded and abandoned amounted to more than one (1) cubic foot [0.0283 cubic meters] in volume or if the litter consisted of furniture or a major appliance, the offense is a class B misdemeanor.

Source: Ord. 906, Sec. 4 (2011)

12-0709. PUBLIC INTOXICATION - ASSISTANCE. A peace officer has authority to take any apparently intoxicated person to the person's home, to a local hospital, to a detoxification center, or, whenever that person constitutes a danger to that person or others, to a jail for purposes of detoxification. A duly licensed physician of a local hospital or a licensed addiction counselor of a detoxification center has authority to hold that person for treatment up to seventy-two (72) hours. That intoxicated person may not be held in jail because of intoxication more than twenty-four (24) hours. An intoxicated person may not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is

indicated. Upon placing that person in a hospital, detoxification center, or jail, the peace officer shall make a reasonable effort to notify the intoxicated person's family as soon as possible. Any additional costs incurred by the City or county on account of an intoxicated person shall be recoverable from that person.

12-0710. NO PROSECUTION FOR INTOXICATION. No person may be prosecuted in any court solely for public intoxication. Law enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxicification.

12-0711. FIREWORKS. Source: Ord. 991, Sec. 2 (2014)

1. The Definition of "fireworks" for the purposes of this chapter means any substance or combination of substances or articles prepared for the purpose of producing a visible or an audible effect by explosion or detonation as defined by the North Dakota State Fire Marshall as 1.4G fireworks, including but not limited to: Star Light, helicopter flyers, cylindrical fountains, cone fountains, wheels, torches, colored fire, sparkler, dipped sticks, comets, shells, soft shell firecrackers not to exceed 1 ½" in length and ½" in diameter total pyrotechnic composition not to exceed 50 mg. each.
2. Except as otherwise provided in herein, it shall be unlawful for any person to offer for sale, expose for sale, sell at retail or wholesale, use, explode or possess any fireworks within the limits of the City of West Fargo. The Chief of the West Fargo Fire Department may grant permits for the sale of fireworks outside of the limits of the City of West Fargo, but within the City of West Fargo's extra-territorial zoning authority.
3. This section shall not prohibit supervised public displays of fireworks by any person, organization or association within the City for which a permit shall have been first obtained from the City Commission. The application for such permit, in such form as may be required by the City Commission, shall be filed with the City Administrator and referred to the Chief of the Fire Department for investigation to determine whether the operator of the display is competent and whether the display is of such character and is to be so located, discharged, or fired that it will not be hazardous to property or endanger any person. The Chief of the Fire Department shall report the results of his investigation to the City Commission who shall determine whether such permit shall be issued or the application rejected. Nothing in this ordinance shall be construed to prohibit the use of fireworks by airplanes and railroads or other transportation agencies for signal purposes or illumination or the sale or use of blank cartridges or pyrotechnic special effects for a motion picture,

television, show or theater, or sale or possession of powder for reloading cartridges or firearms used for hunting or trap shooting, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations.

4. Any individual who is at least 12 years of age may use, explode or possess any retail fireworks within the limits of the City of West Fargo, commencing July 4 at 8:00 a.m. CST, and ending on July 4 at 11:59 p.m. CST, and commencing on December 31 at 8:00 p.m. CST, and ending on January 1 at 1:00 a.m. CST. The individual use, explosion, or possession of fireworks at any other time during the year is prohibited.
5. No person shall ignite, discharge or use fireworks on publicly owned or controlled property, including but not limited to, park property, city or county property, school property or federally owned property without prior written authorization from the governing board or authorized representative of the public entity, which owns or controls the property.
6. No person shall ignite, discharge or use fireworks on any property owned or controlled by another person or entity without the express permission of the owner or person or entity in control of the property.
7. The exception set forth in subsection 4 of this section, providing for use and possession of fireworks during specified dates and times may be suspended by the Chief of the West Fargo Fire Department when a burning ban has been issued for either the State of North Dakota, Cass County or the City of West Fargo. In the event, the Chief of West Fargo Fire Department suspends the use of fireworks, he shall notify the West Fargo Police Department and the Public. The purpose of this subsection is to protect the property and provide for the safety and well-being of the residents of West Fargo.
8. In addition to the penalty provided by section 01-0211, any violation of this section may result in the seizure or removal by the state fire marshal, sheriff, police officer, or local fire marshal, at the expense of the owner, of all fireworks or combustibles offered or exposed for sale, stored, or held.

12-0712. NOISY PARTIES AND GATHERINGS. Source: Ord. 1054, Sec. 1 (2017)

1. Prohibition. No person shall, between the hours of 10:00 p.m. and 8:00 a.m., subject to the exceptions set forth in subsection 4 below, congregate at, or participate in, any party or gathering of two (2) or more people from which noise emanates of a sufficient volume

so as to disturb the peace, quiet, or repose of another person. No person shall knowingly remain at such a noisy party or gathering.

2. Duty to Disperse. When a police officer determines that a party or gathering is in violation of this section the officer may order all persons present at the premises where the violation is occurring, other than the owner or tenants of the premises, to disperse immediately. If an officer determines that a party or gathering is disruptive to the public, regardless of the time of day, the officer shall have discretion to order the party or gathering to disperse. No person shall knowingly remain at such a party or gathering.
3. Cooperation of Owner or Tenant. Every owner of such premises, or tenant in charge of such premises, who has knowledge of the disturbance, shall cooperate with such police officer or officers and shall make reasonable efforts to stop the disturbance and disperse the gathering.
4. Exceptions. The following are exempt from violation of this Section:
 - a. Activities which are duly authorized, sponsored or licensed by the City, so long as the activity is conducted pursuant to the conditions of the license, permit or contract authorizing such activity.
 - b. Church bells, chimes, or carillons.
 - c. Persons who have gone to a party for the sole purpose of abating the violation.
 - d. Sporting events held at athletic facilities owned by the City, the West Fargo Public School District, or any parochial schools in the City.
5. Prima Facie Evidence of Violation by Owner or Tenant of this Section:
 - a. As to tenants, and owner if owner resides on the premises, if twice or more on the same day, or if on successive days, the West Fargo Police Department is called upon to enforce the terms of this Section either by citizen complaint or by personal investigation by a peace officer.
 - b. As to the owner, if the owner does not reside at the premises, if after owner receives written notice of three (3) violations of this Section by his/her/its tenants at any premises owned by owner

in the City within a six (6) month period, and after receipt of such written notice, the West Fargo Police Department is called upon to enforce this Section either by citizen complaint or by personal investigation of a peace officer.

- c. Noise of such volume as to be clearly audible at a distance of fifty feet (50') from the structure or building in which the party or gathering is occurring, or in the case of apartment buildings, in the adjacent hallway or apartment, shall be prima facie evidence of a violation of this Section.

- 6. A person violating this Section is guilty of an infraction for which a maximum fine of one thousand dollars (\$1,000) may be imposed.

12-0713. AGGRESSIVE PANHANDLING.

- 1. The purpose of this Section is to regulate certain acts done with the act of panhandling, rather than the status of the person.

Exclusion: The activities of panhandling do not include a person who passively stands or sits with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific person other than in response to an inquiry by that person.

- 2. Definitions. For the purposes of this Section, certain terms shall have the meanings ascribed to them in this paragraph, unless the context clearly indicates that a different meaning is intended:
 - a. "Assault" means assaultive offenses as set out in statutes of the State of North Dakota, found in Chapter 12.1-17 of the North Dakota Century Code.
 - b. "Aggressively beg" means to beg with the intent to intimidate another person into giving money or goods.
 - c. "Beg" means to ask for money or goods as a charity or gift, whether by words, bodily gesture, signs, or other means.
 - d. "Donation" means any item of value, monetary or otherwise.
 - e. "Exempt organizations" means any nonprofit, religious, civic or benevolent organization described in Section 501(c) of the Internal Revenue Code of the United States.

- f. "Intimidate" means to engage intentionally in conduct which would make a reasonable person fearful or feel compelled.
- g. "Obstruct pedestrian" or "vehicular traffic" means when a person without legal privilege intentionally, knowingly or recklessly walks, stands, sits, lies, or places an object in such manner as another person or a driver of a vehicle has to take evasive action to avoid physical contact.

Acts authorized as an exercise of one's constitutional right to picket, or to legally protest, and acts authorized by a permit issued pursuant to this Section shall not constitute obstruction of pedestrian or vehicular traffic.

- h. "Panhandler" is any person, other than an exempt organization, acting on his or her own behalf, requesting an immediate donation of money or exchange of any services; or any person, acting on his or her own behalf, attempting to sell an item for an amount far exceeding its value, or where said item is already offered free-of-charge to the general public, and a reasonable person would understand that the purchase is in substance a donation.
- i. "Pedestrian interference" means the obstruction of pedestrian or vehicular traffic by aggressively begging which impedes the lawful passage of a pedestrian or of a vehicle.
- j. "Permit" means the permit required under this Section.
- k. "Public place" means an area generally visible to public view and includes alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks and streets open to the general public, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

3. Permit Required.

- a. Any person panhandling within the below described geographical or restricted areas shall be required to have a permit, as issued by the permit office of the City, in his or her possession at all times, subject to exhibition demand to any city officer or employee, and shall be subject to conditions as set out in the following paragraphs 4, 5, 6, and 7.

- b. Restricted geographical areas. Without a permit, persons shall be restricted from panhandling in the following geographical areas:
 - i. All public streets.
 - ii. Public parks, golf course, schools and playgrounds.
 - iii. Municipal or governmentally owned offices.
 - iv. Municipally owned recreational and exhibition buildings.
 - v. Public library facilities.
 - vi. Private properties or shopping malls, unless the owner, lessee, or person in charge has granted permission.
- 4. Time of Panhandling. No panhandling is allowed after sunset or before sunrise.
- 5. Place of Panhandling. No panhandling is allowed in any of the following places:
 - a. At any bus stop;
 - b. In any public transportation vehicle or facility, including loading and unloading areas;
 - c. In any vehicle on the street;
 - d. On private property, unless the panhandler has permission from the owner, occupant or person in charge of the private property.
- 6. Manner of Panhandling. No panhandling is allowed in any of the following ways or manner:
 - a. By using profane or abusive language, either during the solicitation or following a refusal;
 - b. By panhandling in a group of two or more persons;
 - c. By any statement, gesture, or other communication that a reasonable person in the situation of the person solicited would perceive to be a threat;
 - d. By intimidating;

- e. By obstructing pedestrian or vehicular traffic;
 - f. By assaulting or aggressively begging.
7. It shall be unlawful for any person to:
- a. Assault, aggressively beg, intimidate or accost other persons in any public place or in any place open to the public, for the purpose of panhandling or soliciting a donation for immediate payment.
 - b. Obstruct a pedestrian or a vehicle.
8. Penalty. Every person violating any of the provisions of this Section shall be guilty of a class B misdemeanor and subject to the imposition of penalties under Section 1-0211 of the Revised Ordinances of 1990 of the City of West Fargo; and the court to have power to suspend said sentence and to revoke the suspension thereof.

CHAPTER 12-08

Repealed by Ordinance No. 1054, Sec. 2 (2017)

RESERVED FOR FUTURE USE

CHAPTER 12-09

NON-CRIMINAL OFFENSES - CURFEW FOR MINORS

SECTIONS:

- 12-0901. Definitions
- 12-0902. Restrictions
- 12-0903. Exceptions.
- 12-0904. Enforcement.
- 12-0905. RESERVED FOR FUTURE USE.
- 12-0906. Severability.

12-0901. DEFINITIONS. In this section:

1. CURFEW HOURS means:
 - (a) 11:00 p.m. until 6:00 a.m. every day of the week.
2. EMERGENCY means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
3. ESTABLISHMENT means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.
4. GUARDIAN means:
 - (a) a person who, under court order, is the guardian of the person of a minor; or
 - (b) a public or private agency with whom a minor has been placed by a court.
5. MINOR means any person under 16 years of age.
6. OPERATOR means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.
7. PARENT means a person who is:
 - (a) a natural parent, adoptive parent, or step-parent of another person; or

- (b) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.
- 8. PUBLIC PLACE means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
- 9. REMAIN means to:
 - (a) linger or stay; or
 - (b) fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.
- 10. SERIOUS BODILY INJURY means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

12-0902. RESTRICTIONS.

- 1. It shall be unlawful for any minor to remain in any public place or on the premises of any establishment within the city during curfew hours.
- 2. It shall be unlawful for any parent or guardian of a minor to knowingly permit, or by insufficient control allow, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours. The term "knowingly" includes knowledge which a parent or guardian should reasonably be expected to have concerning the whereabouts of a minor in the legal custody of that parent or guardian.
- 3. It shall be unlawful for any owner, operator, or any employee of an establishment to knowingly allow a minor to remain upon the premises of the establishment during curfew hours.

12-0903. EXCEPTIONS.

- 1. The following shall constitute valid exceptions to the operation of the curfew. That the minor was:
 - (a) accompanied by the minor's parent or guardian;
 - (b) on an errand at the direction of the minor's parent or guardian, without any detour or stop;

- (c) in a motor vehicle involved in interstate travel;
- (d) engaged in an employment activity, or going or returning home from an employment activity, without any detour or stop;
- (e) involved in an emergency;
- (f) on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
- (g) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of West Fargo, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of West Fargo, a civic organization, or another similar entity that takes responsibility for the minor;
- (h) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
- (i) married or had been married.

2. It is a defense to prosecution under Section 12-0902 that the owner, operator or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

12-0904. ENFORCEMENT. Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer has probable cause to believe that an offense has occurred and that, based on any response and other circumstances, no defense in Section 12-0903 is present.

12-0905. RESERVED FOR FUTURE USE.
(Repealed by Ord. 961, Sec. 15 (2013))

12-0906. SEVERABILITY. If any provision of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

It is intended that the curfew ordinance be held inapplicable in such cases, if any, where its application would be unconstitutional.

CHAPTER 12-10

RESERVED FOR FUTURE USE
(Repealed by Ord. 961, Sec. 16 (2013))

CHAPTER 12-11

LITTERING OF PUBLIC PLACES BY CONTRACTORS

Source: Ord. 613, Sec. 1 (2001)

SECTIONS:

- 12-1101. Unlawful Dumping and Littering by Contractors.
- 12-1102. Vehicles to be Clean Before Entering Public Street.
- 12-1103. Streets to be Maintained in a Litter-Free Condition.
- 12-1104. Liability of Contractor
- 12-1105. Cleaning Up Littered Streets.
- 12-1106. Exceptions.
- 12-1107. Penalty for Violation.

12-1101. UNLAWFUL DUMPING AND LITTERING BY CONTRACTORS. No contractor shall allow any vehicle to operate out of any construction site, regardless of whether the same shall be operated by the contractor, his agents, employees, or subcontractors, in such a manner as to dump, scatter, or deposit any rubbish, stones, wire, earth, ashes, cinders, sawdust, hay, glass, manure, filth, paper, snow, ice, dirt, grass, leaves, twigs, shrubs, construction waste, garbage, or other offensive or nauseous material on any street, alley, or public place. The Public Works Director shall be and hereby is empowered to order any contractor to take such precautions as he deems necessary to prevent any such foreign materials from being deposited on the street, alley, or public place and to remove all foreign material on the street, alley, or public place. If and in the event any contractor shall fail to comply with the order of the Public Works Director, said Director, or the Chief of Police, may order all construction stopped.

12-1102. VEHICLES TO BE CLEAN BEFORE ENTERING PUBLIC STREET. No contractor or other person shall permit a vehicle to enter upon a public street, alley, sidewalk, or other public place without first (a) having its tires and wheels cleaned so as not to litter or soil any street, alley, sidewalk, or other public place, and (b) having any material removed from the interior or exterior of vehicle body which might fall or be deposited upon any street, alley, sidewalk, or public place by normal movement of vehicle in traveling over such places.

12-1103. STREETS TO BE MAINTAINED IN A LITTER-FREE CONDITION. All streets, alleys, sidewalks, or public places adjacent to any building or construction site shall be maintained in a litter-free condition at all times. This shall include such soiling or littering caused by erosion, landslides, or general construction activities at any such site.

12-1104. LIABILITY OF CONTRACTOR. Whenever a contractor is engaged in any construction or maintenance activity, it shall be his responsibility to see that none of the provisions of this chapter are violated by himself, his agents, employees, subcontractors, or haulers of materials and supplies. If more than one contractor or any governmental unit is involved in work which contributes to the littering of streets, alleys, sidewalks, or other public places in the same site or area, they shall be separately and jointly responsible for compliance with the provisions of this article.

12-1105. CLEANING UP LITTERED STREETS. If a street, alley, sidewalk, or public place should become soiled or littered through any of the means outlined in Sections 12-1101 and 12-1103, the person or persons responsible shall cause such soiling or littering to be cleaned up forthwith. If and when the person or persons responsible fail to comply with any order of the Chief of Police or Public Works Director to clean up or take such precautions as the Chief of Police or Public Works Director deems necessary to prevent foreign materials from being deposited on any street, alley, or public place, then the Chief of Police or Public Works Director may order (in writing) all ingress and egress to the site or area involved stopped until compliance with the order is effected.

12-1106. EXCEPTIONS. The provisions of this chapter shall not apply to construction work within the barricaded area of work being done in the street right-of-way, pursuant to a City excavation permit authorizing the same or to certain emergency or other work being performed within a barricaded area pursuant to a City contract or by certain emergency forces, provided that excavated material stored temporarily within the barricaded area shall not be scattered or carried or allowed to accumulate outside of such area.

12-1107. PENALTY FOR VIOLATION. Every person, firm, association, or corporation convicted of a violation of any of the provisions of this chapter or of any failure to comply with any order of the Chief of Police or Public Works Director, shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

TITLE XIII.

TRAFFIC

(Source: Ord. 602, Sec. 1 (2000))

CHAPTERS:

- 13-01. Definitions.
- 13-02. Criminal Offenses.
- 13-03. Miscellaneous Offenses.
- 13-04. Police Administration.
- 13-05. Enforcement and Obedience to Traffic Regulations.
- 13-06. Traffic Control Devices.
- 13-07. Streets.
- 13-08. Vehicle Regulations.
- 13-09. General Rules of the Road.
- 13-10. Miscellaneous Driving Rules.
- 13-11. Speed.
- 13-12. Turning Movements.
- 13-13. Pedestrians.
- 13-14. Accidents.
- 13-15. Equipment of Vehicles - Size, Weight, Height and Load Restrictions.
- 13-16. Parking.
- 13-17. Railroad Cars and Crossings.
- 13-18. Bicycles.
- 13-19. Transportation by Motor Vehicles of Explosives Within City.
- 13-20. Snowmobiles, All-Terrain Vehicles and Off-Road Motorcycles. (Ord. 735, 2005)
- 13-21. Arrest Procedure.
- 13-22. Penalties, Fees and Fines.

CHAPTER 13-01

DEFINITIONS

SECTIONS:

13-0101. Definitions.

13-0101. DEFINITIONS. The following words and phrases, when used in this title, shall have the meanings respectively ascribed to them except in those instances where the context clearly indicates a different meaning:

1. "Authorized Emergency Vehicles."

a. "Class A" authorized emergency vehicles means:

- (1) Vehicles of a governmentally owned fire department;
- (2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title or by a salaried employee of a municipal police department within the municipality or by a sheriff or deputy sheriff not including special deputy sheriffs, or by the director of the department of corrections and rehabilitation and the director's authorized agents who have successfully completed training in the operation of class A authorized emergency vehicles;
- (3) Vehicles clearly identifiable as property of the Department of Corrections and Rehabilitation when operated or under the control of the Director of the Department of Corrections and Rehabilitation.
- (4) Ambulances;
- (5) Vehicles operated by or under the control of the Director, District Deputy Director, or a District Deputy Game Warden of the Game and Fish Department;
- (6) Vehicles owned or leased by the United States and used for law enforcement purposes.
- (7) Vehicles designated for the use of the Adjutant General and Assistant Adjutant General in cases of emergency;

- (8) Vehicles operated by or under the control of the Director of the Parks and Recreation Department.
 - (9) Vehicles operated by or under the control of a licensed railroad police officer and used for law enforcement purposes.
 - (10) Vehicles operated by or under the control of the state forester.
 - (11) Vehicles operated by or under the control of the Bureau of Criminal Investigation and used for law enforcement purposes.
- b. "Class B" authorized emergency vehicles means wreckers and such other emergency vehicles as are authorized by the local authorities.
- c. "Class C" authorized emergency vehicles means:
- (1) Vehicles used by the State Division of Homeland Security or local division of emergency management organizations.
 - (2) Vehicles used by volunteer firefighters while performing their assigned disaster and emergency responsibilities.
 - (3) Vehicles, other than ambulances, used by emergency medical services personnel.

Source: Ord. 961, Sec. 5 (2013)

- 2. "Bicycle" shall mean every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty (20) inches in diameter.
- 3. "Bus" shall mean every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons, and every motor vehicle, other than a taxi cab, designed and used for the transportation of persons for compensation.
- 4. "Business District" shall mean the territory contiguous to a highway when fifty percent (50%) or more of the frontage thereon for a distance of three hundred (300) feet or more is occupied by buildings in use for business; and the term "business district" shall in all cases include that portion of the City lying within the fire limits now established or to be hereafter established in the City of West Fargo, together with all streets or alleys constituting the boundaries thereof.

5. "Central Business District" shall mean all property adjacent to Main Avenue, Sheyenne Street, and Thirteenth Avenue South.
6. "Commercial Freightage" shall mean the carriage of things other than passengers, for hire, except that such terms shall not include:
 - a. Carriage by local dray lines, baggage or goods to or from a railroad station, from or to places in the City or in the immediate vicinity thereof, not to exceed two miles from the corporate or recognized limits of the City; or
 - b. Hauling done by farmers for their neighbors in transporting agricultural products to or from market.
7. "Commercial Vehicle" shall mean a vehicle designed, maintained, or used primarily for the transportation of property for hire.
8. "Controlled-Access Highway" shall mean every highway, street, or road-way in respect to owners or occupants of abutting lands and other persons have no legal right or access to or from the same except at such points only and in such manner as may be determined by the Board of City Commissioners.
9. "Cross Walk" shall mean and include any clearly marked cross walk, or any regular pedestrian crossing included within the prolongation of the lateral boundary lines of the adjacent sidewalk at the end of the block.
10. "Curb" shall mean the boundary of that portion of the street open to the use of the public from and for the use of vehicles.
11. "Curb Loading Zone" shall mean a space adjacent to a curb reserved for the exclusive use of vehicles for the loading and unloading of passengers or materials.
12. "Dealer" shall mean every person, partnership or corporation engaged in the business of buying, selling or exchanging motor vehicles, or who advertises, or holds himself out to the public as engaged in the buying, selling or exchanging of motor vehicles, or who engages in the buying of motor vehicles for resale. Any person, partnership, corporation, or association doing business in several locations in the City shall be considered a separate dealer in each such location.
13. "Drag Race" shall mean the operation of two (2) or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other, or

the operation of one (1) or more vehicles over a common selected course, from the same point to the same point, for the purposes of comparing the relative speeds or powers of acceleration of such vehicle or vehicles within a certain distance or time limit.

14. "Driver" shall mean every person who drives or is in actual physical control of a vehicle, and shall include the rider or driver of any animal.
15. "Essential Parts" shall mean all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation.
16. "Exhibition Driving" shall mean driving a vehicle in such a manner that it creates or causes unnecessary engine noise, tire squeal, skid or slide upon acceleration or stopping, or that causes the vehicle to unnecessarily turn abruptly or sway.
17. "Explosives" shall mean any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, and which contains any oxidizing or combustible units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing sudden destructive effects on contiguous objects or by destroying life or limb.
18. "Farm Tractor" shall include every motor vehicle designed and used primarily as a farm implement for drawing plows, moving machines, and other implements of husbandry.
19. "Flammable Liquid" shall mean any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed cup test device.
20. "Freight Curb Loading Zone" shall mean a space adjacent to a curb for the exclusive use of vehicles during a loading or unloading of freight.
21. "Guest" shall mean a person who accepts a ride in any vehicle without giving compensation therefore.
22. "Gross Weight" shall mean the weight of a vehicle without load plus the weight of any load thereon.

23. "Highway" shall mean the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.
24. "House car" means a motor vehicle which has been reconstructed or manufactured primarily for private use as a temporary or recreational dwelling and having at least four (4) of the following permanently installed systems:
- a. Cooking facilities.
 - b. Icebox or mechanical refrigerator.
 - c. Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.
 - d. Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.
 - e. Heating or air-conditioning system, or both, separate from the vehicle engine or the vehicle engine electrical system.
 - f. A 110-115 volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.
25. "Implement of Husbandry" shall mean every vehicle designed or adapted exclusively for agricultural, horticultural or livestock raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highway.
26. "Intersection" shall mean the area embraced within the prolongation or connection of the lateral curb line, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle become in conflict, whether or not one such street crosses the other. Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart,

then every crossing of two roadways of such highways shall be regarded as a separate intersection.

27. "Intoxicating Liquor" shall mean and include any beverage containing alcohol.
28. "Laned Roadway" shall mean a roadway which is divided into two or more clearly marked lanes for vehicular traffic.
29. "Legal Owner" shall mean a person who holds the legal title to the vehicle.
30. "Lienholder" means a person holding a security interest in a vehicle.
31. "Local Authorities" shall include every individual, local board, or body having authority to adopt local police regulations under the ordinances of this municipality.
32. "Mail" shall mean to deposit mail properly addressed with postage prepaid with the United States Postal Service.
33. "Manufacturer" shall mean any person engaged in the business of manufacturing motor vehicles or trailers.
34. "Metal Tires" shall include all tires the surface of which in contact with the highway is wholly or partly of metal or other hard, non-resilient material.
35. "Motor Vehicle" shall include any vehicle which is self-propelled.
36. "Motorcycle" shall mean every motor vehicle having a seat or saddle for the use of the rider designed to travel on not more than three wheels in contact with the ground, but excluding implements of husbandry.
37. "Motorized bicycle" means a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion or footrests for use by the operator, a power source providing up to a maximum of two brake horsepower having a maximum piston or rotor displacement of 3.05 cubic inches [49.98 milliliters] if a combustion engine is used, which will propel the vehicle, unassisted, at a speed not to exceed thirty (30) miles [48.28 kilometers] per hour on a level road surface, and a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged, and the vehicle may not have a width greater than thirty-two (32) inches or eighty-one and twenty-eight hundredths (81.28) centimeters.
38. "Non-Resident" shall mean any person who is not a resident of this municipality.

39. "Official Time Standard" shall mean whenever certain hours are named herein they shall mean standard time or daylight savings time as may be in current use in this City.
40. "Official Traffic-Control Devices" shall mean all signs, signals, markings and devices not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.
41. "Open Intersection" shall mean an intersection at which there are no "stop" or "yield" signs posted, and at which there are no traffic control devices installed nor any officer directing traffic.
42. "Operator" shall mean every person who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.
43. "Owner" shall mean the person holding legal title to a vehicle, or if a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee, or if the mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this title.
44. "Park or Parking" shall mean the standing of a vehicle, occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.
45. "Passenger Curb Loading Zone" shall mean a place adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers.
46. "Pedestrian" shall mean any person afoot.
47. "Person" shall include every natural person, firm, partnership, association or corporation.
48. "Pneumatic Tires" shall include all tires inflated with compressed air.
49. "Pole Trailer" shall mean every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads, such as poles, pipes, or

structural members capable, generally, of sustaining themselves as beams between the supporting connections.

50. "Police Officer" shall mean every officer of the Police Department or any officer authorized to direct and regulate traffic or to make arrests for violations of traffic regulations.
51. "Private Road or Driveway" shall mean every way or place in private ownership in use for vehicular travel by the owner and those having expressed or implied permission from the owner, but not by other persons.
52. "Proof of financial responsibility" means proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a motor vehicle, in the amount of twenty-five thousand dollars (\$25,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of fifty thousand dollars (\$50,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of ten thousand dollars (\$10,000) because of injury to or destruction of property of others in any one accident.
53. "Public Building" shall mean any theater, moving picture house, hospital, church, school, city building, state building, federal building, public library or post office.
54. "Racing" shall mean the use of one (1) or more vehicles in an attempt to outgain, outdistance, arrive at a given destination ahead of another vehicle or vehicles, willfully prevent another vehicle from passing, or to test the physical stamina or endurance of drivers over long-distance driving routes.
55. "Railroad" shall mean a carrier of persons or property on cars, other than street cars, operated upon stationary rails.
56. "Railroad Sign or Signal" shall mean any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.
57. "Reckless Driving" shall mean operating any vehicle upon a roadway carelessly and needlessly in willful and wanton disregard to the safety of others, or without due caution and at a speed or in a manner so as to endanger or be likely to endanger any person or property.

- 58. "Reconstructed vehicle" means any vehicle, of a type required to be registered, materially altered from its original construction by the removal, addition, or substitution of new or used essential parts.
- 59. "Residence District" shall mean all of that territory within the City of West Fargo outside the district known and designated as the fire limits, and not comprising a part of the business district.
- 60. "Revocation" means that the driver's license and the privilege to drive a motor vehicle on the public streets are terminated and shall not be renewed or restored except that an application for a new license may be presented and acted upon by the proper authorities after the expiration of the period of revocation, which period shall not be less than thirty (30) days.
- 61. "Right-of-Way" shall mean the privilege of the immediate use of a roadway.
- 62. "Roadway" shall mean that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.
- 63. "Safety Zone" shall mean the area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set aside as a safety zone.
- 64. "School Bus" shall mean every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.
- 65. "School Zone" shall mean the area or space of any public street or alley, any part of which abuts or lies opposite any public or private property used exclusively for school purposes, where any children receive educational training, and shall include public play grounds.
- 66. "Semi-Trailer" shall include any vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another motor vehicle.
- 67. "Sidewalk" shall mean that portion of a street between the curb lines or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

68. "Solid Tires" shall include every tire made of rubber or other material other than a pneumatic tire.
69. "Stand or Standing" shall mean the halting of vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.
70. "Stop" when required, shall mean complete cessation from movement.
71. "Stop or Stopping" when prohibited, this means any halting even momentarily of a vehicle whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or a traffic control sign or signal.
72. "Street" shall mean the entire width between the legal lines of every way publicly maintained when any part thereof is open to the public for the purposes of vehicular travel. Said term shall include and mean public and private parking lots.
73. "Suspension" means that the driver's license and privilege to drive a motor vehicle on the streets are temporarily withdrawn, but only during the period of such suspension.
74. "Through Highway or Street" shall mean every highway street which is described as a principal arterial, minor arterial, or collector street in the Fargo-Moorhead Metropolitan Area Highway Plan Update.
75. "Traffic" shall mean pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any highway for purposes of travel.
76. "Traffic Control Signal" shall mean any device whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.
77. "Trailer" shall include every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.
78. "Tricycle" shall mean every device propelled by human power upon which any person may ride, having three wheels any of which is more than twenty (20) inches in diameter.
79. "Truck" shall include every motor vehicle designed, used, or maintained primarily for transportation of property.

80. "Truck Tractor" shall include every motor vehicle designed and used primarily for drawing other vehicles and not so constructed to carry a load other than a part of the weight of the vehicle and load so drawn.
81. "Urban District" shall mean the territory contiguous to and including any street which is built up with structures devoted to business, industry or dwelling houses situated at intervals of 100 feet for a distance of a quarter of a mile or more.
82. "Vehicle" shall mean every device in, upon, or by which any person or property is, or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks. A bicycle, tricycle or a ridden animal shall be deemed a vehicle.

CHAPTER 13-02
CRIMINAL OFFENSES

SECTIONS:

- 13-0201. Reckless Driving.
- 13-0202. Driving While License Suspended or Revoked.
- 13-0203. Persons Under the Influence of Intoxicating Liquor or Narcotic Drugs not to Operate Vehicle: Declaring What Constitutes Being Under the Influence of Intoxicating Liquor or Narcotic Drugs - Penalty.
- 13-0204. Accidents Involving Damage to Vehicle - Penalty.
- 13-0205. Unlawful Use of License.
- 13-0206. Driving on Flood Protective Works Prohibited.
- 13-0207. Temporary Roadblocks.
- 13-0208. Road Closures - Hazardous Conditions.
- 13-0209. Driving Without Liability Insurance Prohibited - Penalty.
- 13-0210. Duty Upon Striking Highway Fixtures or Other Property.

13-0201. RECKLESS DRIVING. Any person is guilty of reckless driving if the person drives a vehicle:

- 1. Recklessly in disregard of the rights or safety of others; or
- 2. Without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or the property of another.

Except as otherwise herein provided, any person violating the provisions of this section shall be guilty of an offense.

(Source: North Dakota Cent. Code § 39-08-03)

13-0202. DRIVING WHILE LICENSE SUSPENDED OR REVOKED.

- 1. Except as provided in Section 39-06.1-11 of the North Dakota Century Code, an individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while an individual's operator's license is suspended or revoked in any jurisdiction is guilty of a class B misdemeanor for the first, second or third offense within a five-year period. Any subsequent offense within the same five-year period is a class A misdemeanor.
- 2. If a suspension or revocation was imposed for violation of Section 39-08-01 of the North Dakota Century Code or equivalent ordinance or was governed by Section 39-06-31 or Chapter 39-20, the sentence must be at least four (4) consecutive days' imprisonment and such fine as the court deems proper. The execution of sentence may not be suspended or the imposition of sentence deferred under

Subsection 3 or 4 of Section 12.1-32-02 of the North Dakota Century Code. Forfeiture of bail is not permitted in lieu of the defendant's personal appearance in open court for arraignment on a charge under this subsection.

3. A court may dismiss a charge under this section upon motion by the defendant if the defendant's operator's license is reinstated within sixty days of the date of the offense and the defendant provides to the court satisfactory evidence of the reinstatement.
4. In addition to any other punishment imposed, the court may order the number plates of the motor vehicle owned and operated by the offender at the time of the offense to be destroyed by the sheriff. If a period of suspension has been extended under Subsection 6 of Section 39-06-17 of the North Dakota Century Code, the court may order the number plates to be destroyed in accordance with this subsection. The offender shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the sheriff and notify the department of the order. An offender who does not provide the number plates to the court at the appropriate time is subject to revocation of probation.
5. The municipal judge may order destruction of motor vehicle number plates by the office of the police officer that made the arrest in the manner provided in subsection 4.

(Source: North Dakota Cent. Code § 39-06-42) Ord. 974, 2013

13-0203. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR NARCOTIC DRUGS NOT TO OPERATE VEHICLE: DECLARING WHAT CONSTITUTES BEING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR NARCOTIC DRUGS - PENALTY.

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a. That person has an alcohol concentration of at least eight one hundredths of one percent (.08) by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
 - b. That person is under the influence of intoxicating liquor.
 - c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.

- d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.
- e. That individual refuses to submit to any of the following:
 - (1) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under Section 39-06.2-10.2, NDCC, if the individual is driving or is in actual physical control of a commercial motor vehicle; or
 - (2) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under Section 39-20-01, NDCC; or
 - (3) An onsite screening test, or tests, of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer under Section 39-20-14, NDCC.

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person. If the individual violated subdivisions a, b, c, or d of this subsection and subdivision e of this subsection and the violations arose from the same incident, for purposes of suspension or revocation of an operator's license, the violations are deemed a single violation and the court shall forward to the department of transportation only the conviction for driving under the influence or actual physical control.

- 2. a. An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to subject to a

chemical test, or tests, required under Section 39-06.2-10.2, 39-20-01, or 39-20-14, NDCC, is guilty of an offense under this section.

- b. An individual is not subject to an offense under this section for refusal to submit to an onsite screening test under section 39-20-14, NDCC, if the person submits to a chemical test under section 39-20-01 or 39-06.2-10.2, NDCC, for the same incident. Upon the individual's refusal to submit to an onsite screening test, the police officer shall inform the individual that the individual may remedy the refusal if the individual takes a chemical test under section 39-20-01 or 39-06.2-10.2, NDCC, for the same incident.
3. An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a seven-year period, of a class A misdemeanor for a third offense in a seven-year period, and of a class C felony for any fourth or subsequent offense within a fifteen-year period. The minimum penalty for violating this section is as provided in subsection 5. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.
4. Upon conviction of a second or subsequent offense within seven years under this section or equivalent ordinance, the court may order the motor vehicle number plates of all the motor vehicles owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director of the North Dakota Department of Transportation who must retain them for the period of suspension or revocation, subject to their disposition by the court. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a co-owner of the motor vehicle, if the offender is participating in the twenty-four seven sobriety program.
5. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
 - a. (1) For a first offense, the sentence must include both a fine of at least five hundred dollars

and an order for addiction evaluation by an appropriate licensed addiction treatment program.

- (2) In addition, for a first offense when the convicted person has an alcohol concentration of at least sixteen one-hundredths of one percent by weight, the offense is an aggravated first offense and the sentence must include a fine of at least \$750 and at least 2 days' imprisonment.
- b. For a second offense within seven years, the sentence must include at least ten days' imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand five hundred dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least three hundred sixty days' participation in the twenty-four seven sobriety program under Chapter 54-12, NDCC, as a mandatory condition of probation.
 - c. For a third offense within seven years, the sentence must include at least one hundred twenty days' imprisonment; a fine of at least two thousand dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; at least three hundred sixty days' supervised probation; and at least three hundred sixty days' participation in the twenty-four seven sobriety program under Chapter 54-12, NDCC, as a mandatory condition of probation.
 - d. For a fourth or subsequent offense within fifteen years, the sentence must include at least one year and one day's imprisonment, a fine of at least two thousand dollars, and an order for addition evaluation by an appropriate licensed treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under Chapter 54-12, NDCC, as a mandatory condition of probation.
 - e. The imposition of sentence under this section may not be deferred under subsection 4 of Section 12.1-32-02 of the North Dakota Century Code for an offense subject to this section.
 - f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for

an offense subject to paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district court may suspend a sentence, except for sixty days' imprisonment, under subsection 3 of Section 12.1-32-02, NDCC, on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation and upon completion of the twenty-four seven sobriety program. If the offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 of Section 12.1-32-02, NDCC, on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the Department of Corrections and Rehabilitation and is subject to the conditions of probation under Section 12.1-32-07, NDCC. The district court may require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the Supreme Court. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.

- g. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this section.
- h. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program under subdivision g of subsection 1 of Section 12.1-32-02, NDCC, and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section. A court may not order the

Department of Corrections and Rehabilitation to be responsible for the costs of treatment in a private treatment facility.

- i. If the court sentences an individual to the legal and physical custody of the Department of Corrections and Rehabilitation, the Department may place the individual in an alcohol treatment program designated by the Department. Upon the individual's successful completion of the alcohol treatment program, the Department shall release the individual from imprisonment to serve the remainder of the sentence of imprisonment on probation, which may include placement in another facility or treatment program. If an individual is placed in another facility or treatment program after release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody.
- j. If the individual has participated in the twenty-four seven sobriety program as a condition of pretrial release or for the purpose of receiving a temporary restricted operator's license under section 39-06.1-11, NDCC, the sentencing court may give credit for the time the individual has already served on the twenty-four seven sobriety program when determining the amount of time the individual must serve on the twenty-four seven sobriety program for the purposes of probation, if that individual has not violated the twenty-four seven sobriety program before sentencing.

Source: Ord. 961, Sec. 6 (2013); Ord. 1041, Sec. 5 (2015)

13-0204. ACCIDENTS INVOLVING DAMAGE TO VEHICLE - PENALTY. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until the driver has fulfilled the requirements of Section 39-08-06 of the North Dakota Century Code. Every such stop must be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances is guilty of an offense.

(Source: North Dakota Cent. Code § 39-08-05)

13-0205. UNLAWFUL USE OF LICENSE. It shall be unlawful for any person:

1. To display, or cause, or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, or fraudulently altered operator's or chauffeur's license;
2. To lend his operator's or chauffeur's license to any other person or knowingly permit the use thereof by another;
3. To display or represent as one's own any operator's or chauffeur's license not issued to him;
4. To fail or refuse to surrender to the State upon lawful demand any operator's or chauffeur's license which has been suspended, revoked or canceled;
5. To permit any unlawful use of an operator's or chauffeur's license issued to him.

13-0206. DRIVING ON FLOOD PROTECTIVE WORKS PROHIBITED.

1. Unless authorized by the authority in charge thereof, no person shall operate a motor vehicle, tractor, or other vehicle upon or across any flood protective works, including, but not limited to, any dike or flood protective works constructed by a state or federal agency, or by the City of West Fargo or local subdivision of the state.
2. Any person violating the provisions of this section shall be liable to any person suffering injury as a result of the violation and, in addition, shall be guilty of a class B misdemeanor.

13-0207. TEMPORARY ROADBLOCKS.

1. For the purpose of this section, a temporary roadblock means any structure, device, or means used by police, sheriffs, deputy sheriffs, game wardens, highway patrolmen, agents of the federal bureau of investigation, or officers of the United States border patrol, or their agents, for the purpose of controlling traffic through a point on a highway, road, or street, whereby all vehicles may be slowed or stopped.
2. The duly authorized law enforcement officers, or their agents, are hereby authorized to establish in their respective jurisdictions, or in other jurisdictions within the state, temporary roadblocks upon the highways, roads, and streets of this state for the purpose of

apprehending persons wanted for violation of the laws of this state, or of any other state, or of the United States of America, and using the highways, roads, or streets of this state for the purpose of escape.

3. For the purpose of warning and protecting the traveling public, the minimum requirements to be met by such officers establishing temporary roadblocks are:
 - a. The temporary roadblock must be established at a point on the highway clearly visible at a distance of not less than three hundred (300) feet [91.44 meters] in either direction.
 - b. At a point of the temporary roadblock, at least one red light must be placed at the point of the temporary roadblock which must display an intermittent or flashing beam of light, clearly visible to the oncoming traffic at a distance of not less than three hundred (300) feet [91.44 meters] under normal atmospheric conditions. The intermittent or flashing beam of light may be provided by lighting which is part of the equipment of a class A authorized emergency vehicle.
4. Nothing in this section may be deemed to limit or encroach upon the existing authority of North Dakota law enforcement officers in the performance of their duties involving traffic control and criminal apprehension.
5. Any person violating the provisions of this section shall be liable to any person suffering injury as a result of the violation and, in addition, shall be guilty of a class B misdemeanor.

13-0208. ROAD CLOSURES - HAZARDOUS CONDITIONS. The highway patrol or local law enforcement authorities having jurisdiction over a road may close a road temporarily due to hazardous conditions for the protection and safety of the public. If such a closing is made, the authority ordering the closing shall make every reasonable attempt to notify the public and, when practical, may post appropriate official traffic-control devices to advise motorists of the closing. No person, while operating a motor vehicle, may knowingly enter a road closed under this section.

(Source: North Dakota Cent. Code § 39-10-21.1)

13-0209. DRIVING WITHOUT LIABILITY INSURANCE PROHIBITED PENALTY. (Source: Ord. 922, Sec. 1 (2012); Ord. 961, Sec. 7 (2013); Ord. 1041, Sec. 6 (2015))

1. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this

state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1 of the North Dakota Century Code. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law or during the investigation of an accident, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence, including written or electronic proof of insurance, of the policy required under this section. If unable to comply with the request, that person may be charged with a violation of this section. If that person produces a valid policy of liability insurance, including written or electronic proof of insurance in effect at the time of violation of this section to the office of the court under which the matter will be heard, that person may not be found in violation of this section. If the driver is not an owner of the motor vehicle, the driver does not violate this section if the driver provides the court with evidence identifying the owner of the motor vehicle and describing circumstances under which the owner caused or permitted the driver to drive the motor vehicle. Violation of this section is an infraction, and the sentence imposed must include a fine of at least one hundred fifty dollars which may not be suspended. A person convicted for a second or subsequent violation of driving without liability insurance within a thirty-six month period must be fined at least three hundred dollars which may not be suspended.

2. For a violation of this section or equivalent ordinance, the person shall provide proof of motor vehicle liability insurance to the department in the form of a written or electronically transmitted certificate from an insurance carrier authorized to do business in this state. This proof must be provided for a period of three years and kept on file with the department. If the person fails to provide this information, the department shall suspend that person's driving privileges and may not issue or renew that person's operator's license unless that person provides proof of insurance.
3. A person who has violated this section or equivalent ordinance shall surrender that person's operator's license and purchase a duplicate operator's license with a notation requiring that person to keep proof of liability insurance on file with the department. The fee for this license is fifty dollars and the fee to remove this notation is fifty dollars.

4. When an insurance carrier has certified a motor vehicle liability policy, the insurance carrier shall notify the director no later than ten days after cancellation or termination of the certified insurance policy by filing a notice of cancellation or termination of the certified insurance policy; except that a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.
5. For a second or subsequent violation of subsection 1 or equivalent ordinance, the court shall order the motor vehicle number plates of the motor vehicle owned and operated by the person at the time of the violation to be impounded until that person provides proof of insurance and a twenty dollar (\$20) fee to the court. The person shall deliver the number plates to the court without delay at a time certain as ordered by the court. The court shall deliver the number plates to the office of the police officer that made the arrest and notify the department of the order. A person who does not provide the number plates to the court at the appropriate time is guilty of a class B misdemeanor.
6. If a person causes damage to another or another's property with a motor vehicle while in violation of this section, at a minimum the court shall order that person to pay to the other person the amount of the deductible on that person's insurance.

13-0210. DUTY UPON STRIKING HIGHWAY FIXTURES OR OTHER PROPERTY. The driver of any vehicle involved in an accident resulting only in damage to highway fixtures or other property shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license and shall make report of such accident when and as required by state law.

(Source: North Dakota Cent. Code. § 39-08-08)

CHAPTER 13-03

MISCELLANEOUS OFFENSES

SECTIONS:

- 13-0301. Care Required in Operating Vehicle.
- 13-0302. Operation of Motor Vehicles by Certain Minors Forbidden.
- 13-0303. Registration Card to be Carried in or on Vehicle: Inspection of Card.
- 13-0304. Proper Display of License Upon Vehicle.
- 13-0305. Driver's License.
- 13-0306. Restricted Licenses.
- 13-0307. Registration Number Prima Facie Evidence.
- 13-0308. Open Bottle Law-Penalty.
- 13-0309. Careless Driving.
- 13-0310. Exhibition Driving and Racing - Definitions - Penalty.
- 13-0311. Permitting Unauthorized Person to Drive.
- 13-0312. Operators Must be Licensed. (Ord. 856, Sec. 5 (2010))

13-0301. CARE REQUIRED IN OPERATING MOTOR VEHICLE. Any person driving a vehicle upon a highway shall drive the vehicle in a careful and prudent manner, having due regard to the traffic, surface, and width of the highway and other conditions then existing, and shall give such warnings as are reasonable necessary for safe operation under the circumstances. No person may drive any vehicle upon a highway in a manner to endanger the life, limb, or property of any person.

(Source: North Dakota Cent. Code § 39-09-01.1)

13-0302. OPERATION OF MOTOR VEHICLE BY CERTAIN MINORS FORBIDDEN.

1. The driving or operation of any automobile within the City limits of West Fargo by any person under the age of fourteen (14) years is prohibited. The driving or operation of a motorized bicycle within the City limits of West Fargo by a person fourteen (14) years of age or older is permitted, providing the individual is the holder of a valid State permit authorizing the operation of motorized bicycles. The driving or operation of other motor vehicles, including motorcycles, taxi-cabs, trucks and delivery cars, within the limits of West Fargo by any person under the age of sixteen (16) years is prohibited.
2. Any owner or other person having charge of or having within his control or supervision, a motor vehicle, and who knowingly allows or permits such motor vehicle to be

driven or operated within the City of West Fargo by a minor under the age of fourteen (14), shall be guilty of a misdemeanor and shall be deemed to have violated the provisions of this chapter and shall upon conviction thereof be subject to the penalty provided by this title.

13-0303. REGISTRATION CARD TO BE CARRIED IN OR ON VEHICLE: INSPECTION OF CARD. The registration card issued for a vehicle shall be carried in the driver's compartment of the vehicle or, in the case of a house trailer or mobile home or trailer or semi-trailer, regardless of when such vehicle was acquired, inside or on the vehicle, at all times when the vehicle is being operated upon the streets of the City. Such card shall be subject to inspection by any peace officer. Any person violating this section must be assessed a fee of Twenty Dollars (\$20). However, a person cited for violation of this ordinance may not be found to have committed the violation if the person, within forty-eight (48) hours after being cited, produces and displays to any peace officer, or to the hearing official before whom the person was to appear, a registration card valid at the time the person was cited. A peace officer, upon citing a person for violating this person, shall inform the person that a violation will be considered as not having occurred if the person produces and displays a valid registration card in the manner provided in this section. A peace officer receiving evidence of the existence of a valid registration card as herein provided shall notify the hearing official of the appropriate jurisdiction of that fact.

13-0304. PROPER DISPLAY OF LICENSE UPON VEHICLE. It shall be unlawful for any person to commit any of the following acts:

1. To operate or drive a vehicle on the public highways of this state unless the vehicle has a distinctive number assigned to it by the department, and two number plates, bearing the distinctive number conspicuously displayed, horizontally and in an upright position, one on the front and one on the rear of the vehicle, each securely fastened, except number plates assigned to a motorcycle, trailer, or housetrailer must be attached to the rear thereof. When only one number plate is furnished for an apportioned vehicle licensed under the international registration plan as authorized in Section 39-19-04 North Dakota Cent. Code, truck tractor, or semitrailer, the plate must be attached to the front of the apportioned vehicle or truck tractor and the rear of the semitrailer. The bottom of each number plate must be at a height of not less than twelve (12) inches [30.48 centimeters] above the level surface upon which the vehicle stands. Each plate must be mounted in a manner that does not cover any words, letter, or number on the plate. As far as is reasonably possible, the plates must at all times be kept free and clear of mud, ice, or snow so as to be clearly visible and all number plates, markers, or

evidence of registration or licensing except for the current year must be removed from the vehicle. All vehicle license plates issued by the department continue to be the property of the state of North Dakota for the period for which the plates are valid. An annual registration tab or sticker for the current registration year must be displayed on each number plate, in the area designated by the department for the tab or sticker, in those years for which tabs or stickers are issued in lieu of number plates;

2. To operate, or for the owner of the vehicle to knowingly permit anyone to operate, upon a highway any vehicle, the registration of which has been canceled or revoked, or which is not registered, or which does not have attached thereto and displayed thereon a current number plate, plates, or validation tabs assigned thereto by the Registrar of the Motor Vehicle Department of the State of North Dakota, or his appropriate counterpart from another state, subject to the exemptions allowed in this chapter;
3. To display or cause to be displayed, or to have in possession any registration card, registration number plate, or validation tabs knowing the same to be fictitious or to have been canceled, revoked, suspended, or altered;
4. To lend any registration number plate, registration card, or validation tabs to any person not entitled thereto, or knowingly permit the use of any registration number plate or registration card by any person not entitled thereto;
5. To fail or refuse to surrender to the department, upon demand, any registration card, registration number plate, or validation tab which has been suspended, canceled, or revoked as is provided in this chapter;
6. To use a false or fictitious name or address in any application for the registration of any vehicle, or for any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise to commit a fraud in any application;
7. The highway patrol and all other road or police officers shall enforce the provisions of this chapter; and
8. Any person violating any of the provisions of this chapter for which another penalty is not specifically provided is guilty of a class B misdemeanor.

13-0305. DRIVER'S LICENSE.

1. Every licensee shall have the licensee's operator's

license or permit in the licensee's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of any district court, municipal court, a patrolman, peace officer or a field deputy or inspector of the State Highway Department. However, no person charged with violating this section may be convicted or assessed any court costs if the person produces in court, to the chief of police or in the office of the arresting officer an operator's license or permit theretofore issued to that person and valid and not under suspension, revocation or cancellation at the time of the person's arrest.

2. No person shall operate a motor vehicle in any manner in violation of the restrictions imposed upon a license or permit issued to him.

Source: Ord. 906, Sec. 5 (2011)

13-0306. RESTRICTED LICENSES. No person shall operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him.

13-0307. REGISTRATION NUMBER PRIMA FACIE EVIDENCE. In any proceeding for a violation of the provisions of this title or any local ordinance, rule or regulation, the registration plate displayed on such vehicle or tractor shall be prima facie evidence that the owner of such vehicle or tractor was then operating the same. If in any hearing or proceeding, the owner shall testify, under an oath or affirmation, that he was not operating the said vehicle or tractor at the time of the alleged violation of this title or any local ordinance, rule or regulation, and shall submit himself to an examination as to who at that time was operating such a vehicle or tractor, and reveal the name of the person, if known to him or, if the information is made in a county other than that of his own residence, shall forward to the magistrate an affidavit setting forth these facts, then the prima facie evidence arising from the registration plate shall be overcome and removed and the burden of proof shifted.

13-0308. OPEN BOTTLE LAW-PENALTY.

1. A person may not drink or consume alcoholic beverages, as defined in Section 5-01-01 of the North Dakota Century Code, in or on any motor vehicle when the vehicle is upon a public highway or in an area used principally for public parking. A person may not have in that person's possession on that person's person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It shall be unlawful for the

owner of any private motor vehicle or the driver, if the owner is not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking any bottle or receptacle containing alcoholic beverages which have been opened, or the seal broken, or the contents of which have been partially removed, except when such bottle or receptacle is kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This section does not prohibit the consumption or possession of alcoholic beverages in a house car, as defined in Section 39-01-01, of the North Dakota Century Code, if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating the provisions of this section must be assessed a fee of Fifty Dollars (\$50); however, the licensing authority shall not record the violation against person's driving record unless the person was the driver of the motor vehicle at the time that the violation occurred.

2. Subsection 1 does not apply to a public conveyance that has been commercially chartered for group use, any passenger for compensation in a for-hire motor vehicle, or a privately owned motor vehicle operated by a person in the course of that person's usual employment transporting passengers at the employer's direction. This subsection does not authorize possession or consumption of an alcoholic beverage by the operator of any motor vehicle described in this subsection while upon a public highway or in an area used principally for public parking.

(Source: North Dakota Cent. Code § 39-08-18)

13-0309. CARELESS DRIVING. No person may drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or

highway conditions. Any person who drives a vehicle upon a highway or private or public property open to the public for the operation of motor vehicles without heed to the requirements or restrictions of this section has committed careless driving and must be assessed a fee of thirty dollars.

Source: Ord. 906, Sec. 6 (2011)

13-0310. EXHIBITION DRIVING AND DRAG RACING - DEFINITIONS
PENALTY.

1. No person shall engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, nor shall any person engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. Any person who violates this section by engaging in an act defined by subdivision b of subsection 2 must be assessed a fee of fifty dollars (\$50). Any person who violates this section by engaging in an act defined by subdivision a or c of subsection 2 must be assessed a fee of one hundred dollars (\$100).
2. As used in this section:
 - a. "Drag race" means the operation of two or more vehicles from a point side-by-side by accelerating rapidly in a competitive attempt to cause one vehicle to out distance the other; or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speed or powers of acceleration of such vehicle or vehicles within a certain distance or time limit.
 - b. "Exhibition driving" means driving a vehicle in a manner which disturbs the peace by creating or causing unnecessary engine noise, tire squeal, skid, or slide upon acceleration or braking; or driving and executing or attempting one or a series of unnecessarily abrupt turns.
 - c. "Race" means the use of one or more vehicles in an attempt to outgain, outdistance, or to arrive at a given distance ahead of another vehicle or vehicles; or the use of one or more vehicles to willfully prevent another vehicle from passing the facing vehicle or vehicles, or to test the physical stamina or endurance of the persons driving the vehicles over a long distance driving route.

Nothing in this section shall be construed as prohibiting drag racing, exhibition driving, or similar events when carried out in an organized manner on a track or other privately owned area specifically set aside and used solely for such purposes by drivers of motor vehicles, including snowmobiles.

(Source: North Dakota Cent. Code §39-08-03.1)

13-0311. PERMITTING UNAUTHORIZED PERSON TO DRIVE. No person may authorize or knowingly permit a motor vehicle owned by the person or under the person's control to be driven upon any highway by any person who is not authorized hereunder or in violation of any of the provisions of this chapter.

13-0312. OPERATORS MUST BE LICENSED. A person, unless expressly exempted in this section, may not drive any motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state unless the person has a valid license as an operator under the provisions of Chapter 39-06, N.D.C.C., or a temporary operator's permit issued under Chapter 39-20, N.D.C.C. A person may not receive an operator's license unless and until that person surrenders to the director all operator's licenses issued to the person by any jurisdiction. When a license issued by another jurisdiction is surrendered, the director shall notify the issuing jurisdiction of its surrender. A person may not have more than one valid operator's license at any time.

Source: Ord. 856, Sec. 5 (2010).

CHAPTER 13-04

POLICE ADMINISTRATION

SECTIONS:

- 13-0401. Records of Traffic Violations.
 - 13-0402. Traffic Accident Studies.
 - 13-0403. Traffic Accident Reports.
 - 13-0404. Drivers' Files to be Maintained.
 - 13-0405. Police Department to Submit Annual Traffic-Safety Report.
 - 13-0406. Emergency and Experimental Regulations.
 - 13-0407. Provisions of Title Refer to Vehicles Upon the Highways - Exceptions.
 - 13-0408. Removal of Vehicles.
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13-0401. RECORDS OF TRAFFIC VIOLATIONS.

1. The Police Department shall keep a record of all violations of the traffic ordinances of this city of which any person has been charged, together with a record of the final disposition of all such alleged offenses. Such record shall be so maintained as to show all types of violations and a total of each.
2. All forms for records of violations and notices of violations shall be serially numbered. For each month and year a written record shall be kept available to the public showing the disposal of such forms.
3. All such records and reports shall be public record.

13-0402. TRAFFIC ACCIDENT STUDIES. Whenever the accidents at any particular location become numerous, the Police Department shall conduct studies of such accidents and determine remedial measures.

13-0403. TRAFFIC ACCIDENT REPORTS. The Police Department shall maintain a suitable system of filing traffic accident reports.

13-0404. DRIVERS' FILES TO BE MAINTAINED. The Police Department shall maintain a suitable record of all traffic accidents, warnings, arrests, convictions, and complaints reported for each driver.

13-0405. POLICE DEPARTMENT TO SUBMIT ANNUAL TRAFFIC-SAFETY REPORT. The Department shall annually prepare a traffic report which shall be filed with the City Commission. Such report shall

contain information on traffic matters in this City as follows:

1. The number of traffic accidents, the number of persons killed, the number of persons injured, and other pertinent traffic accident data;
2. The number of traffic accidents investigated and other pertinent data on safety activities of the police;
3. The plans and recommendations of the Department for future traffic safety activities.

13-0406. EMERGENCY AND EXPERIMENTAL REGULATIONS.

1. The Chief of Police is hereby empowered to make regulations necessary, to make effective provisions of the traffic ordinances of this City and to make and enforce temporary or experimental regulations to cover emergencies or special conditions. No such temporary or experimental regulations shall remain in effect for more than ninety (90) days.
2. The Department may test traffic-control devices under actual conditions of traffic.

13-0407. PROVISIONS OF TITLE REFER TO VEHICLES UPON THE HIGHWAYS - EXCEPTIONS.

1. The provisions of this title relating to the operation vehicles apply to the operation of vehicles upon highways or other places open to the public for the operation of vehicles except where a different place is specifically referred to in a given section.
2. Provisions of this title relating to reporting of accidents, careless driving, exhibition driving, drag racing, reckless driving, driving while under the influence of intoxicating liquor or controlled substances shall apply anywhere within the jurisdiction of the West Fargo Municipal Court whether it is on a highway or elsewhere.

13-0408. REMOVAL OF VEHICLES. Motor vehicles found in violation of the provisions of Title 13, or any other Ordinance of the City of West Fargo, or any resolution passed pursuant thereto, or which may be impounded under any laws of the State of North Dakota or the United States, may be removed by or under the direction of the police department to the City Hall, or any other place designated by the police department, and held until the costs and expenses of such removal and storage, together with any and all fines or penalties imposed for violation of the Ordinances of the City of West Fargo, are paid. The Chief of Police of the City of West Fargo is authorized to develop and maintain policy guidelines for the implementation of this section.

CHAPTER 13-05

ENFORCEMENT AND OBEDIENCE TO TRAFFIC REGULATIONS

SECTIONS:

- 13-0501. Authority of Police and Fire Department Officials.
- 13-0502. Obedience to Police and Fire Department Officials.
- 13-0503. Public Employees When Subject to Provisions of this Title.
- 13-0504. Rights of Owners of Real Property Used for Roadway to Make Regulations for Same.

13-0501. AUTHORITY OF POLICE AND FIRE DEPARTMENT OFFICIALS.

1. It shall be the duty of the officers of the Police Department or such officers as are assigned by the Chief of Police to enforce all street traffic laws of the city and all of the State vehicle laws applicable to street traffic in the City.
2. Officers of the Police Department or such officers as are assigned by the Chief of Police are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws, provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the Police Department may direct traffic if conditions may require notwithstanding the provisions of the traffic laws.
3. Officers of the Fire Department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

13-0502. OBEDIENCE TO POLICE AND FIRE DEPARTMENT OFFICIALS.
No person shall willfully fail or refuse to comply with any lawful order or direction of a police or fire department official.

13-0503. PUBLIC EMPLOYEES WHEN SUBJECT TO PROVISIONS OF THIS TITLE. The provisions of this title shall apply to the driver of any vehicle owned by or used in the service of the United States government, the State of North Dakota, this County, City, District or other political subdivisions of the State, and it shall be unlawful for any said driver to violate any of the provisions of this title subject to exceptions as are set forth in this title or in the State Vehicle Code. The provisions of this title shall not apply to persons, teams, motor vehicles or other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles while traveling to or from work.

13-0504. RIGHTS OF OWNERS OF REAL PROPERTY USED FOR ROADWAY TO MAKE REGULATIONS FOR SAME. Nothing in this title shall be construed to prevent the owner of real property used by the public for the purposes of vehicular travel by permission of the owner and not as a matter of right, from prohibiting such use nor from requiring other or different or additional conditions than those specified in this title or otherwise regulating such use as may seem best to such owner.

CHAPTER 13-06

TRAFFIC CONTROL DEVICES

SECTIONS:

- 13-0601. Authority to Install Traffic Control Devices.
 - 13-0602. Manual and Specifications for Traffic-Control Devices.
 - 13-0603. Obedience to Official Traffic-Control Devices.
 - 13-0604. Traffic-Control Signal Legend.
 - 13-0605. Pedestrian Control Signals.
 - 13-0606. Flashing Signals.
 - 13-0607. Designates Crosswalks and Establishes Every Safety Zone and Traffic Lane.
 - 13-0608. Police Department to Establish and Designate Public Carrier Stops and Stands.
 - 13-0609. Intersection Where Yield is Required.
 - 13-0610. Interference with Official Traffic-Control Devices or Railroad Signs or Signals.
 - 13-0611. Display of Unauthorized Signs, Signals or Markings.
 - 13-0612. Injury to Traffic Control Devices.
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13-0601. AUTHORITY TO INSTALL TRAFFIC CONTROL DEVICES.

1. The Street Department shall place and maintain traffic control signs, signals and devices when requested to do so by the Police Department. The Police Department, upon the approval of the City Commission, may place and maintain such additional traffic control devices as may be necessary to regulate traffic under the traffic ordinances of this City or under State law or to guide or warn traffic.
2. The Street Department and Police Department are hereby authorized to erect temporary signs indicating no parking upon either or both sides of any street when such parking would in its opinion interfere with traffic or create a hazardous situation.

13-0602. MANUAL AND SPECIFICATIONS FOR TRAFFIC-CONTROL DEVICES. All traffic-control signs, signals, and devices shall conform to the specifications approved by the State Highway Commissioner pursuant to North Dakota Century Code Section 39-13-06. All signs and signals required hereunder for a particular purpose shall so far as practicable be uniform as to type and location throughout the City. All traffic-control devices so erected and not inconsistent with the provisions of State law or this article shall be official traffic-control devices.

13-0603. OBEDIENCE TO OFFICIAL TRAFFIC-CONTROL DEVICES.

1. The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.
2. No provision of this chapter for which traffic control devices are required may be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinary observant person. Whenever a state statute does not state that devices are required, such statute is effective even though no devices are erected or in place.
3. Whenever official traffic control devices are placed in positions approximately conforming to the requirements of North Dakota Cent. Code Chapter 30-10, such devices must be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary is established by competent evidence.
4. Any official traffic control device placed pursuant to the provision of North Dakota Cent. Code Chapter 39-10 and purporting to conform to the lawful requirements pertaining to such devices must be presumed to comply with the requirements of Chapter 39-10, unless the contrary is established by competent evidence.

(Source: North Dakota Cent. Code § 39-10-04)

13-0604. TRAFFIC-CONTROL SIGNAL LEGEND. Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow may be used, except for special pedestrian signals carrying a word or legend, and said lights must indicate and apply to drivers of vehicles and pedestrians as follows:

1. Green indications:
 - a. Vehicular traffic facing a circular green indication may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

- b. Vehicular traffic facing a green arrow indication, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.
 - c. Unless otherwise directed by a pedestrian-control signal as provided for in section 39-10-06, pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.
- 2. Steady yellow indication:
 - a. Vehicular traffic facing a steady circular yellow or yellow arrow indication is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic may not enter the intersection.
 - b. Pedestrians facing a steady circular yellow or yellow arrow indication, unless otherwise directed by a pedestrian-control signal as provided for in section 39-10-06, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian may then start to cross the roadway.
- 3. Steady red indication:
 - a. Vehicular traffic facing a steady circular red indication alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication to proceed is shown, except as provided for in subdivision c.
 - b. Vehicular traffic facing a steady red arrow indication may not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make a movement permitted by another indication, must stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the

intersection and must remain standing until an indication permitting the movement indicated by the red arrow is shown except as provided for in subdivision c.

- c. Except when a sign is in place prohibiting a turn, vehicular traffic facing any steady red indication may cautiously enter the intersection to turn right, or to turn left from a one-way street into a one-way street, after stopping as required by subdivisions a and b. Such vehicular traffic shall yield the right of way to pedestrians lawfully within adjacent crosswalk and to other traffic lawfully using the intersection.
 - d. Unless otherwise directed by a pedestrian-control signal as provided for in section 39-10-06, pedestrians facing a steady circular red or red arrow indication alone may not enter the roadway.
4. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section are applicable, except as to those provisions which by their nature can have no application. Any stop required must be made at a sign or marking on the pavement indicating where the stop must be made, but in the absence of any such sign or marking the stop must be made at the signal.

(Source: North Dakota Cent. Code § 39-10-05)

13-0605. PEDESTRIAN CONTROL SIGNALS. Whenever special pedestrian control signals exhibiting the words "Walk" or "Don't Walk" or the symbols of a walking person, symbolizing "Walk", or an upraised hand, symbolizing "Don't Walk" are in place, such signals must indicate as follows:

- 1. "Walk": Pedestrians facing such indication may proceed across the roadway in the direction of the indication and must be given the right of way by the drivers of all vehicles.
- 2. "Don't Walk" (steadily illuminated): A pedestrian may not start to cross the roadway in the direction of such indication.
- 3. "Don't Walk" (flashing): A pedestrian may not start to cross the roadway in the direction of the indication, but any pedestrian who has partially completed a crossing during the "Walk" signal must proceed in the direction of the indication to a sidewalk or safety island.

(Source: North Dakota Cent. Code § 39-10-06)

13-0606. FLASHING SIGNALS.

1. Whenever an illuminated flashing red or yellow light is used in a traffic signal or with a traffic sign, it requires obedience by vehicular traffic as follows:
 - a. Flashing red (stop indication). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, or, if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it, and the right to proceed is subject to the rules applicable after making a stop at a stop sign.
 - b. Flashing yellow (caution indication). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such indication only with caution.
 - c. Flashing red arrow and flashing yellow arrow indications have the same meaning as the corresponding flashing circular indications, except that they apply only to drivers of vehicles intending to make the movement indicated by the arrow.
2. This section does not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings is governed by the requirements set forth in Section 39-10-41.

(Source: North Dakota Cent. Code § 39-10-07)

13-0607. DESIGNATES CROSSWALKS AND ESTABLISHES EVERY SAFETY ZONE AND LANE. The Police Department is hereby authorized:

1. To designate and maintain, by appropriate devices, marks, or lines upon the surface of the roadway, crosswalks at the intersection where in their opinion there is particular danger to pedestrians crossing the roadway, and at such other places as may be necessary;
2. To establish safety zones of such kind and character and at such places as may be necessary for the protection of pedestrians;
3. To designate traffic lanes upon the roadway of any street or highway where a regular alinement of traffic is

necessary. Where such traffic lanes have been marked, it shall be unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement.

13-0608. POLICE DEPARTMENT TO ESTABLISH AND DESIGNATE PUBLIC CARRIER STOPS AND STANDS. The Chief of Police is hereby authorized, subject to the approval of the Board of City Commissioners, to establish bus stops, bus stands, taxicab stands and stands for other passenger common-carrier motor vehicles on such public street in such places and in such numbers so as to be of the greatest benefit and convenience to the public. Every such bus stop, bus stand, taxicab or other stand shall be designated by appropriate signs.

13-0609. INTERSECTION WHERE YIELD IS REQUIRED. The Police Department is hereby authorized to determine and designate intersections where particular hazard exists upon other than through streets and to determine:

1. Whether vehicles shall stop at one or more entrances to any such intersection, in which event it shall cause to be erected a stop sign at every such place where stop is required subject to the approval of the Board of City Commissioners;
2. Whether vehicles shall yield right-of-way to vehicles on a different street at such intersection in which event it shall cause to be erected a yield sign at every place where obedience thereto is required.

13-0610. INTERFERENCE WITH OFFICIAL TRAFFIC-CONTROL DEVICES OR RAILROAD SIGNS OR SIGNALS. No person may, without lawful authority, attempt to or in fact alter, deface, inure, knock down, or remove any official traffic control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any part thereof.

(Source: North Dakota Cent. Code § 39-10-07.3)

13-0611. DISPLAY OF UNAUTHORIZED SIGNS, SIGNALS OR MARKINGS.

1. No person may place, maintain, or display upon or in view of any highway, any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.

2. No person may place or maintain nor may any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.
3. This section may not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.
4. Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice when located on highway right of way.
5. No person may place, maintain, or display upon or within the right of way of any highway any sign, post, pole, mailbox, or signal which has a red lamp or red reflector visible to traffic. The provisions of this subsection do not apply to official traffic devices, lamps, or reflectors on motor vehicles or bicycles, or railroad signals or signs.

(Source: North Dakota Cent. Code § 39-10-07.2)

13-0612. INJURY TO TRAFFIC CONTROL DEVICES. No person may remove, injure, or destroy any mileboard, milestone, or guidepost, traffic-control signals, signs, or markings, or any inscription thereon, erected or placed upon any highway, road, or street by any public authority or by any contractor, subcontractor, or employee engaged in construction activities pursuant to a contract with a public authority therefor.

CHAPTER 13-07

STREETS

SECTIONS:

- 13-0701. Creation and Extension of Through and One-way Streets.
- 13-0702. Authority to Sign One-way Streets and Alleys.
- 13-0703. One-way Streets and Alleys.
- 13-0704. Authority to Establish Play Streets.
- 13-0705. Play Streets - Driving Restricted.
- 13-0706. Dumping of Snow on City Street Prohibited.

13-0701. CREATION AND EXTENSION OF THROUGH AND ONE-WAY STREETS. The Chief of Police may create, extend or discontinue through streets and may create one-way streets provided the Board of City Commissioners approve the same by resolution.

13-0702. AUTHORITY TO SIGN ONE-WAY STREETS AND ALLEYS. Whenever any ordinance of the City designates any one-way street or alley, the Street Department shall place and maintain signs giving notice thereof, and no such regulations shall be effective unless such signs are in place. Signs indicating the direction of lawful traffic movement shall be placed at every intersection where movement of traffic in the opposite direction is prohibited.

13-0703. ONE-WAY STREETS AND ALLEYS. Upon one-way streets and alleys, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained.

13-0704. AUTHORITY TO ESTABLISH PLAY STREETS. The Chief of Police shall have authority to declare any street or part thereof a play street and to place appropriate signs or devices in the roadway indicating and helping to protect the same, providing the Board of City Commissioners approves the same by resolution.

13-0705. PLAY STREETS - DRIVING RESTRICTED. Whenever authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or portion thereof except drivers of vehicles having business or whose residences are within such closed area, and then any said driver shall exercise the greatest care in driving upon any such street or portion thereof.

13-0706. DUMPING OF SNOW ON CITY STREET PROHIBITED. It shall be unlawful for any person, association, partnership, corporation, or other entity to deposit, place or dump, or permit or authorize the depositing, placing or dumping of any snow removed from any private property or City right-of-way, including public sidewalks

and private driveways located upon the street right-of-way upon any City street. It shall further be a violation of this section to deposit, place, or dump, or permit or authorize the depositing, placing or dumping of any snow upon public right-of-ways other than from adjacent sidewalks and driveways.

Source: Ord. 607, Sec. 1 (2001).

CHAPTER 13-08

VEHICLE REGULATIONS

SECTIONS:

- 13-0801. Operation of Motor Vehicle, Tractor or Other Vehicle Prohibited on Flood Protective Works: Exception.
- 13-0802. Driving on Inclines and Under Viaducts.
- 13-0803. When Permits Required for Street Closing.
- 13-0804. Renting Motor Vehicle: License of Renter.
- 13-0805. Renting Motor Vehicle: License Inspection.
- 13-0806. Renting Motor Vehicle: Records.
- 13-0807. Clinging to Vehicles.
- 13-0808. Persons Propelling Push Carts or Riding Animals to Obey Traffic Regulations.
- 13-0809. Use of Coasters, Roller Skates and Similar Devices Restricted.
- 13-0810. Garbage, Glass, Etc. on Highways Prohibited.
- 13-0811. Abandoned Motor Vehicles.
- 13-0812. Low Speed Vehicles.

13-0801. OPERATION OF MOTOR VEHICLE, TRACTOR OR OTHER VEHICLE PROHIBITED ON FLOOD PROTECTIVE WORKS: EXCEPTION. Unless authorized by the authority in charge thereof, no person shall operate a motor vehicle, tractor or other vehicle upon or across any flood protective works, including but not limited to dike or flood protective works constructed by a state or federal agency, or by a municipality or local subdivision of the state. Any person violating the provisions of this section shall be liable to the city municipality or political subdivision suffering injury for the full amount sustained thereby and in addition thereto shall be guilty of a misdemeanor.

13-0802. DRIVING ON INCLINES AND UNDER VIADUCTS. The driver of a motor vehicle traversing any incline or curve or proceeding under any viaduct or bridge shall hold such motor vehicle under control and as near the right-hand side of the highway as reasonably possible and upon approaching any curve or point where the view is obstructed along the highway shall give audible warning with a horn or other warning device.

13-0803. WHEN PERMITS REQUIRED FOR STREET CLOSING. No processions, parade, or any event that requires closure of a street, or in the judgment of the Police Department is likely to impede traffic, or does not comply with normal traffic regulations shall occupy, march or proceed along any street except in accordance with a permit issued by the City Commission and other pertinent regulations, statutes and ordinances.

Source: Ord. 932, Sec. 1 (2012)

13-0804. RENTING MOTOR VEHICLE: LICENSE OF RENTER. No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a non-resident, then duly licensed under the laws of the state or country of his residence, or unless the renter certifies that the vehicle shall be driven by a duly licensed driver.

13-0805. RENTING MOTOR VEHICLE: LICENSE INSPECTION. No person shall rent a motor vehicle to another unless he has inspected the operator's or chauffeur's license of the person to whom the vehicle is to be rented, or of the person by whom the vehicle shall be driven, and compared and verified the signature thereon with the signature of such person written in his presence.

13-0806. RENTING MOTOR VEHICLE: RECORDS. Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person, or, his certified driver, and the date and place when and where said license was issued. Such record shall be open to inspection by any police officer.

13-0807. CLINGING TO VEHICLES. No person riding upon any vehicle, coaster, skis, roller skates, sled, toboggan or toy vehicle shall attach the same or himself, with or without any of the aforementioned items, to any vehicle upon any roadway.

13-0808. PERSONS PROPELLING PUSH CARTS OR RIDING ANIMALS TO OBEY TRAFFIC REGULATIONS. Every person propelling any push cart or riding an animal upon a roadway, and every person driving any animal-drawn vehicle, shall be subject to the provisions of this title applicable to the driver of any vehicle, except those provisions of this title which by their very nature can have no application.

13-0809. USE OF COASTERS, ROLLER SKATES AND SIMILAR DEVICES RESTRICTED. No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians.

13-0810. GARBAGE, GLASS, ETC. ON HIGHWAYS PROHIBITED.

1. No person may throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, rubbish, or any other substance likely to injure any person, animal, or vehicle.
2. Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

3. Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

(Source: North Dakota Cent. Code § 39-10-59)

13-0811. ABANDONED MOTOR VEHICLES.

1. As used in this section, unless the context or subject matter otherwise requires:
 - a. "Abandoned motor vehicle" means a motor vehicle, as defined in section 39-01-01, North Dakota Cent. Code, that has remained for a period of more than forty-eight (48) hours on public property illegally or lacking vital component parts, or has remained for a period of more than forty-eight (48) hours on private property without consent of the person in control of such property or in an inoperable condition such that it has no substantial potential further use consistent with its usual functions unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section 39-26-10, North Dakota Cent. Code. An antique automobile, as defined in Section 39-04-10.4, North Dakota Cent. Code, and other motor vehicles to include parts car and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this chapter.
 - b. "Collector" means the owner of one or more special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest vehicles or parts thereof for the person's own use in order to restore, preserve, and maintain a special interest vehicle or antique vehicle.
 - c. "Department" means the state department of health.
 - d. "Parts car" means a motor vehicle generally in nonoperable condition which is owned by the collector to furnish parts to restore, preserve, and maintain a special interest vehicle or antique vehicle.
 - e. "Special interest vehicle" means a motor vehicle which is at least twenty (20) years old and which has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.

- f. "Unit of government" includes a state department or agency, a county, city, township, or other political subdivision.
 - g. "Vital component parts" means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels.
- 2. Any person who abandons a motor vehicle on any public or private property, without the consent of the person in control of such property is guilty of a class A misdemeanor.
- 3. The City of West Fargo Police Department may take into custody and impound any abandoned motor vehicle.

13-0812. LOW-SPEED VEHICLES.

- 1. As used in this section, unless the context otherwise requires:
 - a. "Low-speed vehicle" means a four-wheeled vehicle that is able to attain a speed, upon a paved surface, of twenty (20) miles per hour [32 kilometers per hour] in one (1) mile [1.6 kilometers] and not more than twenty-five (25) miles per hour [40 kilometers per hour] in one (1) mile [1.6 kilometers] and may not exceed one thousand five hundred (1,500) pounds [680.39 kilograms] in unloaded weight.
 - b. "Operate" means to ride in or on and control the operation of a low-speed vehicle.
 - c. "Register" means the act of assigning a registration number to a low-speed vehicle.
- 2. A person may not operate a low-speed vehicle on a highway on which the speed limit exceeds thirty-five (35) miles [56.33 kilometers] per hour. The operator of a low-speed vehicle may make a direct crossing of a highway on which the speed limit exceeds thirty-five (35) miles [56.33 kilometers] per hour if the crossing is made so the operator can continue on a highway on which the speed limit does not exceed thirty-five (35) miles [56.33 kilometers] per hour.
- 3. A low-speed vehicle must be equipped with headlamps, front and rear turn signal lamps, tail lamps, signal lamps, reflex reflectors on each side as far to the rear of the vehicle as practicable and one red reflector on the rear, brakes, a parking brake, a windshield, a

vehicle identification number, a safety belt installed at each designated seating position, an exterior mirror mounted on the operator's side of the vehicle, and either an exterior mirror mounted on the passenger's side of the vehicle or an interior rearview mirror

CHAPTER 13-09

GENERAL RULES OF THE ROAD

SECTION:

- 13-0901. Following Too Closely.
- 13-0902. Right of Way.
- 13-0903. Exception to the Right of Way Rule.
- 13-0904. Vehicle Entering Through Street or Stop Intersection.
- 13-0905. Vehicle Entering Yield Intersection.
- 13-0906. Driving on Divided Street or Highway.
- 13-0907. Restricted Access.
- 13-0908. Restrictions on Use of Controlled-Access Roadways.
- 13-0909. Drive on Right Side of Roadway: Exceptions.
- 13-0910. Passing Vehicles Proceeding in Opposite Directions.
- 13-0911. Dimming of Headlights on Meeting Another Vehicle.
- 13-0912. Overtaking a Vehicle on the Left.
- 13-0913. When Overtaking on the Right is Permitted.
- 13-0914. Limitations on Overtaking on the Left.
- 13-0915. Further Limitations of Driving to Left of Center of Roadway.
- 13-0916. No Passing Zones.
- 13-0917. Driving on Roadways Laned for Traffic.
- 13-0918. Stopping on Street.
- 13-0919. Emerging from Alley, Driveway or Building.
- 13-0920. Authorized Emergency Vehicles.
- 13-0921. Operation of Vehicles on approach of Authorized Emergency Vehicles.
- 13-0922. Pedestrian Under Influence of Alcohol or Drugs.

13-0901. FOLLOWING TOO CLOSELY. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the street, and in no event more closely than would permit the driver of the vehicle following another to stop within the space between the two vehicles in case the first vehicle stops upon the street.

13-0902. RIGHT OF WAY. The following rules shall be applicable to the right of way of vehicles:

1. When two vehicles approach or enter an intersection at approximately the same time and there is a reasonable probability of a collision unless one gives way, the driver of the vehicle on the left has the greater duty to maintain a fair margin of safety and shall yield the right of way to the vehicle on the right except as otherwise provided in this title.

2. The driver of any vehicle traveling at an unlawful speed shall forfeit any right of way which he might otherwise have hereunder.
3. The driver of a vehicle which is backing up shall yield the right of way to other vehicles.

13-0903. EXCEPTION TO THE RIGHT OF WAY RULE. The following shall be exceptions to the right of way rules:

1. The driver of a vehicle entering a public street or highway from a private road or drive shall yield the right of way to all vehicles approaching or on such public street or highway; and
2. The driver of a vehicle upon the streets or highways of this city shall yield the right of way to a Class A authorized emergency vehicle when the driver of any said vehicle sounds audible signal by horn, bell, siren or exhaust whistle as may be reasonably necessary, or when the vehicle is equipped with at least one lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle except that an authorized emergency vehicle operated as a police vehicle need not be equipped with nor display a red light visible from in front of the vehicle, right of way shall be yielded to such authorized emergency vehicle, regardless of traffic signals, lights or signs. This provision shall not operate to relieve the driver of such authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the streets or highways, nor shall it protect the driver of any such vehicle from the consequences of his reckless disregard for the safety of others.

13-0904. VEHICLE ENTERING THROUGH STREET OR STOP INTERSECTION.

1. The driver of a vehicle shall come to a complete stop before entering or crossing any through street or highway and shall use special care and caution in crossing the intersection of or intercepting the lines of traffic on, such through highways or streets, until his way is clear of such through traffic; provided that when the traffic at any intersection of such through street or highway is regulated or controlled by traffic lights, or by a member of the police department on duty, the driver of any vehicle shall be regulated and controlled thereby and shall act in accordance with the directions and regulations of such traffic lights or such traffic policemen, and in accordance with any traffic signs therein placed affecting such traffic;

2. The driver of a vehicle shall likewise come to a complete stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through street or highway shall use special care and caution in crossing the intersection of, or intercepting the line of traffic on, such stop intersection, until his way is clear of such traffic; provided that when the traffic at any intersection is regulated or controlled by traffic lights, or by a member of the police department on duty, the driver of any vehicle shall be regulated and controlled thereby, and shall act in accordance with the directions and regulations of such traffic lights or such traffic policeman, and in accordance with any traffic signs there in place affecting such traffic;
3. Every driver approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection, or in the event there is not a crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by police officer or a traffic-control signal.

13-0905. VEHICLE ENTERING YIELD INTERSECTION.

1. The driver of a vehicle approaching a yield right-of-way sign shall in obedience to such sign slow down to a speed reasonable for the existing condition or shall stop, if necessary, and shall yield the right-of-way to any pedestrian legally crossing the roadway on which he is driving and to any vehicle in the intersection or approaching on another street or highway so closely as to constitute an immediate hazard. A driver who enters a yield intersection without stopping or has or causes a collision with a pedestrian in a crosswalk or a vehicle in the intersection shall prima facie be considered not to have yielded as required herein. The foregoing shall not relieve the drivers of other vehicles approaching the intersection at such distance as not to constitute an immediate hazard from the duty to drive with due care to avoid a collision.
2. The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if not, then at a point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

13-0906. DRIVING ON DIVIDED STREET OR HIGHWAY. Whenever any street or highway has been divided into two roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority.

13-0907. RESTRICTED ACCESS. No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

13-0908. RESTRICTIONS ON USE OF CONTROLLED-ACCESS ROADWAYS. The director may by order, and local authorities may by ordinance, with respect to any controlled access roadway under their respective jurisdictions, prohibit the use of any such roadway by any class or kind of traffic which is found incompatible with the normal safe movement of traffic.

The director or local authority adopting any such prohibition shall erect and maintain official traffic control devices on the controlled access roadway on which such prohibitions are applicable, and when in place, no person may disobey the restriction stated on such devices.

(Source: North Dakota Cent. Code § 39-10-21)

13-0909. DRIVE ON RIGHT SIDE OF ROADWAY: EXCEPTIONS.

1. Upon all roadways of sufficient width a vehicle must be driven upon the right half of the roadway, except as follows:
 - a. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
 - b. When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;
 - c. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
 - d. Upon a roadway restricted to one-way traffic.

2. Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing must be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn in an intersection or into a private road or driveway.
3. Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle may be driven to the left of the centerline of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subdivision b of subsection 1. However, this subsection may not be construed as prohibiting the crossing of the centerline in making a left turn into or from an alley, private road, or driveway.

(Source: North Dakota Cent. Code § 39-10-08)

13-0910. PASSING VEHICLES PROCEEDING IN OPPOSITE DIRECTIONS. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the roadway as nearly as possible.

(Source: North Dakota Cent. Code § 39-10-09)

13-0911. DIMMING OF HEADLIGHTS ON MEETING ANOTHER VEHICLE. Whenever a driver of a vehicle approaches an oncoming vehicle during a time specified in Section 13-1510 of these ordinances, the driver of each vehicle shall dim his headlamps so that under normal atmospheric conditions, such lamps shall throw a beam not more than one hundred feet ahead of such vehicle.

13-0912. OVERTAKING A VEHICLE ON THE LEFT. The following rules govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

1. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.
2. Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give

way to the right in favor of the overtaking vehicle on audible signal and may not increase the speed of that driver's vehicle until completely passed by the overtaking vehicle.

(Source: North Dakota Cent. Code § 39-10-11)

13-0913. WHEN OVERTAKING ON THE RIGHT IS PERMITTED.

1. The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
 - a. When the vehicle overtaken is making or about to make a left turn; or
 - b. Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.
2. The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. Such movement may not be made by driving off the roadway.

(Source: North Dakota Cent. Code § 39-10-12)

13-0914. LIMITATIONS ON OVERTAKING ON THE LEFT. No vehicle may be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable, and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet [60.96 meters] of any approaching vehicle.

(Source: North Dakota Cent. Code § 39-10-13)

13-0915. FURTHER LIMITATIONS ON DRIVING TO LEFT OF CENTER OF ROADWAY.

1. No vehicle may be driven to the left side of the roadway under any of the following conditions:
 - a. When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a

hazard in the event another vehicle might approach from the opposite direction.

- b. When approaching within one hundred feet [30.48 meters] of or traversing any intersection or railroad grade crossing.
 - c. When the view is obstructed upon approaching within one hundred feet [30.48 meters] of any bridge, viaduct, or tunnel.
2. The foregoing limitations do not apply upon a one-way roadway, nor under the conditions described in section 39-10-08, nor to the driver of a vehicle turning left into or from an alley, private road, or driveway.

(Source: North Dakota Cent. Code § 39-10-14)

13-0916. NO PASSING ZONES.

1. The director and local authorities are hereby authorized to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving on the left side of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.
2. Where signs or markings are in place to define a no-passing zone as set forth in subsection 1, no driver may at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.
3. This section does not apply under the conditions described in section 39-10-08 nor to the driver of a vehicle turning left into or from an alley, private road, or driveway.

(Source: North Dakota Cent. Code § 39-10-15)

13-0917. DRIVING ON ROADWAYS LANED FOR TRAFFIC. Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith apply:

1. A vehicle must be driven as nearly as practicable entirely within a single lane and may not be moved from

such lane until the driver has first ascertained that such movement can be made with safety.

2. Upon a roadway which is divided into three lanes and provides for two-way traffic, a vehicle may not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.
3. Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device.
4. Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

(Source: North Dakota Cent. Code § 39-10-17)

13-0918. STOPPING ON STREET. The following rules shall be applicable stopping and parking vehicles on streets:

1. No person shall park or leave standing any vehicle, whether attended or unattended, upon the main traveled portion of any street when it is practicable to park or leave such vehicle standing off the main traveled portion of the street; provided in no case shall any person park or leave standing attended or unattended, upon any street, a vehicle unless a clear and unobstructed width of not less than fifteen feet shall be left free for the passage of other vehicles thereon, and unless a clear view of such vehicle may be obtained from a distance of two hundred feet in both directions upon such streets;
2. No driver of any vehicle shall stop the same on any street, avenue, lane or alley of the city in such manner as to prevent or hinder other vehicles or persons from passing at all times, unless in case of absolute necessity, nor shall any driver of any vehicle stop the same at any regular crossing of said street, alley, lane or avenue so as to prevent the free passage of persons traveling or passing on foot.

3. Whenever any police officer shall find a vehicle standing upon a street or highway in violation of the provisions of this section, he is hereby authorized to move such vehicle, or require the driver or person in charge of such vehicle to move such vehicle, to a position permitted under this section, or to impound it at the expense of the owner or driver.
4. Provisions of this section shall not apply to the driver of any vehicle which is disabled while upon the main traveled portion of a street in such manner and to such extent that it is impossible to avoid stopping temporarily leaving such vehicle in such position.

13-0919. EMERGING FROM ALLEY, DRIVEWAY OR BUILDING. The driver of a vehicle emerging from an alley, driveway, private road, or building within a business or resident district shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across such alley, building entrance, road, or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon. Such driver entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

13-0920. AUTHORIZED EMERGENCY VEHICLES.

1. The driver of a Class A authorized emergency vehicle may:
 - a. Park or stand, irrespective of the provisions of this chapter;
 - b. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
 - c. Exceed the speed limit so long as he does not endanger life or property;
 - d. Disregard regulations governing directions of movement or turning in specified directions.
2. The exceptions herein granted to a Class A authorized emergency vehicle shall apply only:
 - a. When the authorized emergency vehicle is in pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions;
 - b. When the Class A authorized emergency vehicle is being operated in response to a reported emergency involving a possible personal injury, death or damage to property, and giving adequate warning by use of a flashing red or combination red and white

lights which are visible under normal atmospheric conditions for at least five hundred feet (152.4 meters), and, if appropriate, giving audible signal by siren or air horn. A fire truck, ambulance, or law enforcement vehicle that is otherwise a class A authorized emergency vehicle may display a flashing blue light in addition to and under the same conditions as the other colors allowed in this subdivision.

- c. In any instance when the head of the law enforcement agency deems advisable within the area of his jurisdiction for the protection of person and property and when giving audible signal by siren or when giving adequate warning by use of a flashing red or combination red and white lights which are visible under normal atmospheric conditions for at least five hundred feet (152.4 meters). A fire truck, ambulance, or law enforcement vehicle that is otherwise a class A authorized emergency vehicle may display a flashing blue light in addition to and under the same conditions as the other colors allowed in this subdivision.
- 3. No emergency vehicle shall display or permit to be displayed any red lamp except when operated on official business.
- 4. Any law enforcement officer as provided in paragraph 2 of subdivision a of subsection 1 of Section 39-01-01 of the North Dakota Century Code having stopped another vehicle along a highway, and while still involved in that incident, or any other such activity, may use amber lights, visible under normal atmospheric conditions for at least five hundred feet (152.4 meters), for the purpose of maintaining traffic flow.
- 5. The driver of Class B authorized emergency vehicles may:
 - a. Park or stand, irrespective of the provisions of this chapter;
 - b. Exceed the speed limit so long as he does not endanger life or property during the time of a local or national disaster;
 - c. Disregard regulations governing direction of movement or turning in specified directions.
- 6. The exceptions granted in this section to a Class B authorized emergency vehicle shall apply only:

- a. When the authorized emergency vehicle is displaying an amber and white light visible under normal atmospheric conditions for a distance of five hundred feet (152.4 meters) in any direction;
 - b. When it is necessary for the authorized emergency vehicle to use these exemptions for the immediate protection of life or property;
 - c. When an authorized emergency vehicle is stopped on a highway for the purpose of performing a duty as required of the driver; or
 - d. When traveling at a speed slower than the normal flow of traffic.
7. All Class B specifications apply to Class C authorized emergency vehicles except that a rotating blue flashing light shall be displayed in place of an amber light as provided in section 39-10-03.1 of the North Dakota Century Code. With respect to vehicles used by state and local disaster emergency service personnel, the Division of Homeland Security is responsible for adopting rules for the use of flashing blue lights in accordance with Chapter 28-32 NDCC.

Source: Ord. 961, Sec. 8 (2013); Ord. 1041, Sec. 7 (2015)

13-0921. OPERATION OF VEHICLES ON APPROACH OF AUTHORIZED EMERGENCY VEHICLES.

1. Upon the immediate approach of an authorized emergency vehicle displaying a visible flashing, revolving, or rotating blue, white, or red light, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.
2. Whenever an emergency vehicle is parked or stopped at the scene of an emergency and is displaying a flashing, revolving, or rotating blue, white, or red light, approaching traffic shall move to the right-hand edge or curb of the roadway and shall stop, but once having stopped, traffic may proceed past the scene at its own risk when the roadway is clear, except when otherwise directed by a police officer.

3. This section does not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(Source: North Dakota Cent. Code § 39-10-26)

13-0922. PEDESTRIAN UNDER INFLUENCE OF ALCOHOL OR DRUGS. A pedestrian who is under the influence of alcohol or any drug to a degree which renders himself a hazard may not walk or be upon a roadway, sidewalk or crosswalk.

CHAPTER 13-10

MISCELLANEOUS DRIVING RULES

SECTIONS:

- 13-1001. Following Fire Apparatus Prohibited, Parking Within Block Where Fire Apparatus Used Prohibited: Driving Over Fire Hose or Through Street Barricade Prohibited.
- 13-1002. Driving Through Parade, Funeral or Procession.
- 13-1003. Drivers in a Procession.
- 13-1004. Vehicle Shall Not Be Driven on a Sidewalk.
- 13-1005. Limitations on Backing.
- 13-1006. Opening and Closing Vehicle Doors.
- 13-1007. Motorcycles - Helmet.
- 13-1008. Starting Parked Vehicles.
- 13-1009. Boarding or Alighting From Vehicles.
- 13-1010. Unlawful Riding.
- 13-1011. Cruising About Streets Forbidden.
- 13-1012. Towing Sleds and Carts.
- 13-1013. Obstruction to Driver's View or Driving Mechanism.
- 13-1014. Coasting Prohibited.
- 13-1015. Child Restraint Devices - Penalty - Evidence.
- 13-1016. Overtaking and Passing of School Bus.
- 13-1016A. Permitting Use of Vehicle to Violate Section 13-1016 Prohibited - Presumption of Permission - Defense - Dual Prosecution Prohibited
- 13-1017. Use of Safety Belts Required in Certain Motor Vehicles.
- 13-1018. Driving on Road Closed Because of Hazardous Conditions Prohibited.
- 13-1019. Use of a Wireless Communications Device Prohibited.
- 13-1020. Use of an Electronic Communication Device by a Minor Prohibited.

13-1001. FOLLOWING FIRE APPARATUS PROHIBITED, PARKING WITHIN BLOCK WHERE FIRE APPARATUS USED PROHIBITED: DRIVING OVER FIRE HOSE OR THROUGH STREET BARRICADE PROHIBITED. It shall be unlawful for the driver of any vehicle other than one on official business:

1. To follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet;
2. To drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm;
3. To drive over any fire hose without the consent of the fire department official in command;
4. To drive through or around any street barricade.

13-1002. DRIVING THROUGH PARADE, FUNERAL OR PROCESSION. No vehicle except an authorized emergency vehicle as defined in

Section 13-0101(1)(a) may drive through any parade, funeral or procession except with the permission or upon the signal of a police officer.

13-1003. DRIVERS IN A PROCESSION. Each driver in a funeral or other procession shall drive as near to the right-hand edge of the roadway as practicable and shall follow the vehicle ahead as close as is practicable and safe. The headlights of all vehicles shall be turned on so that identification of vehicles in such procession is easily established.

13-1004. VEHICLE SHALL NOT BE DRIVEN ON A SIDEWALK. The driver of a vehicle shall not drive on or within any sidewalk area except at a permanent or temporary driveway.

13-1005. LIMITATIONS ON BACKING.

1. The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.
2. The driver of a vehicle shall not back the same upon any shoulder or roadway of any controlled-access highway.

13-1006. OPENING AND CLOSING VEHICLE DOORS. No person shall open a door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

13-1007. MOTORCYCLES - HELMET.

1. No person under the age of eighteen (18) years shall operate or ride upon a motorcycle unless protective headgear, which complies with standards established by the North Dakota Highway Department, is being worn on the head of the operator and rider, except when participating in a lawful parade. If the operator of a motorcycle is required to wear protective headgear, any passenger must also wear protective headgear regardless of the age of the passenger.
2. This section shall not apply to persons riding within an enclosed cab or on a golf cart.
3. No person shall operate a motorcycle if a person under the age of eighteen (18) years is a passenger upon that motorcycle and is not wearing protective headgear as provided in subsection 1.

13-1008. STARTING PARKED VEHICLES. No person may start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

(Source: North Dakota Cent. Code § 39-10-37)

13-1009. BOARDING OR ALIGHTING FROM VEHICLES. No person shall board or alight from any vehicle while such vehicle is in motion.

13-1010. UNLAWFUL RIDING. No person shall ride on any vehicle or any portion thereof not designated or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise.

13-1011. CRUISING ABOUT STREETS FORBIDDEN. No common carrier of freight or passengers shall cruise about the streets to solicit business.

13-1012. TOWING SLEDS AND CARTS. No driver or operator shall tow or permit the towing by any vehicle on the streets of the City of West Fargo of any sleigh, wagon, cart, toboggan, skis or any other device which creates a traffic hazard.

13-1013. OBSTRUCTION TO DRIVERS' VIEW OR DRIVING MECHANISM.

1. No person may drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.
2. No passenger in a vehicle may ride in such a position as to interfere with the driver's view ahead or to the sides, or to interfere with the driver's control over the driving mechanism of the vehicle.

(Source: North Dakota Cent. Code § 39-10-54)

13-1014. COASTING PROHIBITED.

1. The driver of any motor vehicle when traveling upon a downgrade may not coast with the gears or transmission of such vehicle in neutral.
2. The driver of a truck or bus when traveling upon a downgrade may not coast with the clutch disengaged.

(Source: North Dakota Cent. Code § 39-10-56)

13-1015. CHILD RESTRAINT DEVICES - PENALTY - EVIDENCE.

1. If a child, under four (4) years of age, is present in any motor vehicle, that motor vehicle must be equipped with at least one (1) child restraint system for each such child. The child restraint system must meet the standards adopted by the United States Department of Transportation for those systems (49 CFR 571.213). While the motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. If a child who is at least four (4) and at most seventeen (17) years of age is present in a motor vehicle, unless properly secured in an approved child restraint system, the child must be buckled in a seatbelt whenever the car is moving. Use of child restraint systems and seatbelts is not required in motor vehicles that were not equipped with seatbelts when manufactured.
2. Violation of this ordinance is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

(Source: North Dakota Century Code Section 39-21-41.2)

13-1016. OVERTAKING AND PASSING OF SCHOOL BUS.

1. The driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop the vehicle before reaching such school bus when there is in operation on said school bus the, flashing red lights specified in Section 39-21-18, North Dakota Cent. Code, and said driver shall not proceed until such school bus resumes motion or he is signaled by the school bus driver to proceed or the flashing red lights are no longer actuated.
2. Every school bus shall bear upon the front and rear thereof plainly visible signs containing the word "SCHOOL BUS" in letters not less than eight inches [20.32 centimeters] in height. When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for a school sanctioned activity, all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.
3. The operator of a school bus equipped with amber caution lights may activate those lights at a distance of not less than three hundred feet [91.44 meters] nor more than five hundred feet [152.4 meters] from the point where

school children are to be received or discharged from the bus.

4. Every school bus shall be equipped with red visual signals meeting the requirements of Section 39-21-18, North Dakota Cent. Code, which may be actuated by the driver of said school bus whenever, but only whenever, such vehicle is stopped on the highway for the purpose of receiving or discharging school children. A school bus driver shall not actuate said special visual signals:
 - a. On city streets on which the receiving or discharging of school children is prohibited by ordinance;
 - b. At intersections or other places where traffic is controlled by traffic-control signals of police officers; or
 - c. In designated school bus loading areas where the bus is entirely off the roadway.
5. The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.
6. Every school bus must bear on the rear of the bus a plainly visible sign containing the words "THIS SCHOOL BUS STOPS AT ALL RAILROAD CROSSINGS".

(Source: North Dakota Cent. Code § 39-10-46)

13-1016A. PERMITTING USE OF VEHICLE TO VIOLATE SECTION 13-1016 PROHIBITED -- PRESUMPTION OF PERMISSION -- DEFENSE -- DUAL PROSECUTION PROHIBITED. The registered owner of a motor vehicle may not permit that motor vehicle to be operated in violation of Section 13-1016. If a motor vehicle is seen violating Section 13-1016, it is a disputable presumption that the registered owner of the motor vehicle permitted that violation. It is a defense to a charge of violating this section that the registered owner of the vehicle was not operating the vehicle, if that registered owner identifies the person authorized by that owner to operate the motor vehicle at the time of the violation of Section 13-1016, or if that motor vehicle had been taken without the registered owner's permission. A person may not be charged both with violating this section and with violating Section 13-1016. Violation of this section is not a lesser included offense of violation of Section 13-1016.

Source: Ord. 838, Sec. 1 (2008)

13-1017. USE OF SAFETY BELTS REQUIRED IN CERTAIN MOTOR VEHICLES.

1. Subject to the limitations of this section and Section 39-21-41.5 of the North Dakota Century Code, a driver may not operate upon a highway a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts unless each front seat occupant is wearing a properly adjusted and fastened safety belt. This section does not apply to a child in a child restraint or seatbelt; to drivers of implements of husbandry; to operators of farm vehicles; to rural mail carriers while on duty delivering mail; to an occupant with a medical or physically disabling condition that prevents appropriate restraint in a safety belt, if a qualified physician states in a signed writing the nature of the condition and the reason restraint is inappropriate; or when all front seat safety belts are in use by other occupants. A physician who, in good faith, provides a statement that restraint would be inappropriate is not subject to civil liability.
2. A peace officer may not issue a citation for a violation of this section unless the officer lawfully stopped or detained the driver of the motor vehicle for another violation.

(Source: North Dakota Cent. Code §§ 39-21-41.4 and -41.5)

13-1018. DRIVING ON ROAD CLOSED BECAUSE OF HAZARDOUS CONDITIONS PROHIBITED.

1. Law enforcement having jurisdiction over a road may close a road temporarily due to hazardous conditions for the protection and safety of the public. If such a closing is made, the authority making the closing shall make every reasonable attempt to notify the public and, when practical, may post appropriate official traffic control devices to advise motorists of the closing.
2. The Chief of Police, or other authorized law enforcement official, may declare a "state of emergency" and order no travel temporarily due to hazardous conditions for the protection and safety of the public.
3. An individual, while operating a motor vehicle, may not knowingly enter a road closed which is posted with an appropriate traffic-control device at the point of entry. The penalty for such violation shall be a fee of two hundred fifty dollars (\$250).

Source: Ord. 906, Sec. 7 (2011)

13-1019. USE OF A WIRELESS COMMUNICATIONS DEVICE PROHIBITED.

1. The operator of a motor vehicle that is part of traffic may not use a wireless communications device to compose, read, or send an electronic message.
2. Under this section:
 - a. "Electronic message" means a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices. The term includes e-mail, a text message, an instant message, a command or request to access a world wide web page, or other data that uses a commonly recognized electronic communications protocol. The term does not include:
 - (1) Reading, selecting, or entering a telephone number, an extension number, or voice mail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a telephone or cellular phone call or using voice commands to initiate or receive a telephone or cellular phone call;
 - (2) Inputting, selecting, or reading information on a global positioning system device or other navigation system device;
 - (3) Using a device capable of performing multiple functions, such as fleet management systems, dispatching devices, smart phones, citizen band radios, music players, or similar devices, for a purpose that is not otherwise prohibited;
 - (4) Voice or other data transmitted as a result of making a telephone or cellular phone call; or
 - (5) Data transmitted automatically by a wireless communication device without direct initiation by an individual.
 - b. "Traffic" means operation of a motor vehicle while in motion or for the purposes of travel on any street or highway and includes a temporary stop or halt of motion, such as at an official traffic-control signal or sign. The term does not include a motor vehicle that is lawfully parked.
3. This section does not apply if a wireless communications device is used for obtaining emergency assistance to

report a traffic accident, medical emergency, or serious traffic hazard or to prevent a crime about to be committed, in the reasonable belief that an individual's life or safety is in immediate danger, or in an authorized emergency vehicle while in the performance of official duties.

Source: Ord. 906, Sec. 10 (2011)

13-1020. USE OF AN ELECTRONIC COMMUNICATION DEVICE BY A MINOR PROHIBITED. An individual at least sixteen and under eighteen years of age who has been issued a class D license may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger.

Source: Ord. 906, Sec. 11 (2011)

CHAPTER 13-11

SPEED

SECTIONS:

- 13-1101. Speed Limitations.
- 13-1102. Speed Limitations Inapplicable to Whom: Liability of Exempt Driver for Reckless Driving.
- 13-1103. Increase or Decrease of Speed Limits.
- 13-1104. Impeding Traffic.
- 13-1105. Radar Evidence in Speed Violations.

13-1101. SPEED LIMITATIONS. Except in instances where a lower speed is specified in this Title or by the laws of this state, it shall be prima facie lawful for the driver of a vehicle to drive the same at a speed not exceeding:

1. Twenty-five miles per hour on all streets and avenues of this city unless otherwise posted.
2. The posted school zone speed limit when passing a school which is in session and when children are present, including going to or leaving school during opening or closing hours. When children are present shall be defined to mean whenever one or more children are on the roadway, sidewalk, pathway, road shoulder, in front of school buildings, or on adjacent school grounds. This definition applies to children present on the same side of the street as the school building, as well as across the street from the school building in any direction within the marked school zone.
3. Fifteen miles an hour in traversing or going around curves or traversing a grade upon a highway or street when the driver's view is obstructed within a distance of one hundred feet along such street in a direction in which he is proceeding; or at any intersection.

In any case when the speed limitation provided for in the foregoing subsection shall be unsafe, it shall be unlawful to operate a motor vehicle at such speed. It shall be unlawful for any person to exceed any such foregoing speed limitations except as otherwise provided in this Title.

Source: Ord. 847, Sec. 1 (2009); Ord. 856, Sec. 2 (2010).

13-1102. SPEED LIMITATIONS INAPPLICABLE TO WHOM: LIABILITY OF EXEMPT DRIVER FOR RECKLESS DRIVING. The speed limitations provided for in this Title shall not apply to operators of vehicles designated in Section 13-0920 while in the performance of their

duties. The exemption provided for in this section shall not protect the driver of any such vehicle from the consequences of reckless disregard of the safety of others.

13-1103. INCREASE OR DECREASE OF SPEED LIMITS. The Chief of Police, subject to the approval of the Board of City Commissioners, may increase or decrease the speed limits as set by Section 13-1101 above, providing signs giving notice of such changes are properly placed and maintained. In addition, the Public Works Director, in consultation with the Chief of Police, has the authority to post lower speed limits in construction zones without Commission approval. The fee for speeding in a construction zone will be as provided for in Section 39-06.1-06(13), N.D.C.C.. The increased fine in this section does not apply unless individuals engaged in construction are present at the time and place of the violation and the posted speed limit sign states "Minimum Fee \$80".

Source: Ord. 731, Sec. 1 (2004); Ord. 856, Sec. 3 (2010)

13-1104. IMPEDING TRAFFIC. Except when necessary for safe operation or to comply with some other provisions of this Title, no person shall drive a motor vehicle at a rate of speed or in such a manner, so slow as to block or impede the normal and reasonable flow of traffic.

13-1105. RADAR EVIDENCE IN SPEED VIOLATIONS. The speed of any motor may be checked by the use of radio microwaves or other electrical device. The results of such checks shall be accepted as prima facie evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue. The driver of any such motor vehicle may be arrested without a warrant under this section, provided the arresting officer is in uniform or displays his badge of authority and provided that such officer has observed the record of the speed of such motor vehicle by the radio microwave or other electrical device, or has received a radio message from the officer who observed the speed of the motor vehicle recorded by the radio microwave or other electrical device.

CHAPTER 13-12

TURNING MOVEMENTS

SECTIONS:

- 13-1201. Required Position and Method of Turning at Intersections.
- 13-1202. Turning Movements and Required Signals.
- 13-1203. Vehicle Turning Left at Intersection
- 13-1204. Authority to Place Restricted Turn Signs.
- 13-1205. Obedience to No-turn Signs.
- 13-1206. Limitations on Turning Around.
- 13-1207. Authority to Place and Obedience to Turning Markers.

13-1201. REQUIRED POSITION AND METHOD OF TURNING AT INTERSECTIONS. The driver of a vehicle intending to turn at an intersection shall do as follows:

1. Right turn. Both approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway;
2. Left turns on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection;
3. Left turns on other than two-way roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of the vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered; and
4. The City may cause marker, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in

this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs.

13-1202. TURNING MOVEMENTS AND REQUIRED SIGNALS.

1. No person shall turn a vehicle or move right or left upon a roadway unless or until such movement can be made with reasonable safety without giving an appropriate signal in the manner hereinafter provided.
2. A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning. Signal either by an approved mechanical or electrical device or by means of hand and arm in the manner hereinafter specified. Whenever the signal is given by means of hand and arm, the driver shall indicate his intention to turn left by extending the hand and arm horizontally; to indicate a right turn by extending the forearm and hand upward and to indicate a stop by extending the arm outward and down; in each case, from and beyond the left side of the vehicle.
3. No person shall stop or suddenly decrease the speed of the vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

13-1203. VEHICLE TURNING LEFT AT INTERSECTION. The driver of a vehicle intending to turn left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. Said driver shall use special care and caution in entering the intersection and completing the left turn.

13-1204. AUTHORITY TO PLACE RESTRICTED TURN SIGNS. The Police Department is hereby authorized to determine those intersections at which drivers of vehicles shall not make a right, left or "U" turn, and shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when such turns are permitted.

13-1205. OBEDIENCE TO NO-TURN SIGNS. Whenever authorized signs are erected indicating that no right or left or "U" turn is permitted, no driver of a vehicle shall disobey a direction of any such sign.

13-1206. LIMITATIONS ON TURNING AROUND.

Source: Ord. 946, Sec. 1 (2013)

1. No "U" turn shall be made at any mid-block location or at any signalized intersection in the City unless permitted by a sign posted by the City. The police department may by means of signs forbid "U" turns.
2. No vehicle shall be turned so as to proceed in the opposite direction upon any curve, whereupon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

13-1207. AUTHORITY TO PLACE AND OBEDIENCE TO TURNING MARKERS.

The police department may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by the vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs.

CHAPTER 13-13

PEDESTRIANS

SECTIONS:

- 13-1301. Pedestrians Subject to Traffic-Control Signals.
- 13-1302. Right-of-way of Pedestrians When Intersection is Regulated.
- 13-1303. Right-of-way of Pedestrians When an Intersection is not Regulated.
- 13-1304. Crossing at Other than Crosswalks.
- 13-1305. Pedestrians to Use Right Half of Crosswalk.
- 13-1306. Blind Persons Right-of-Way.
- 13-1307. Obedience of Pedestrians to Bridge and Railroad Signals.
- 13-1308. Pedestrians Walking Along Roadways.
- 13-1309. Pedestrians Soliciting Rides or Business.
- 13-1310. Blocking Traffic of Pedestrians.
- 13-1311. Pedestrians not to Obstruct Traffic.
- 13-1312. Right to Cross Street Safely: Interference with Vehicles.
- 13-1313. Playing on Streets Prohibited.
- 13-1314. Drivers to Exercise Due Care.

13-1301. PEDESTRIANS SUBJECT TO TRAFFIC-CONTROL SIGNALS. Pedestrians shall be subject to traffic-control signals and heretofore declared in Section 13-0604 and 13-0605 of this title, but at all other places pedestrians shall have those rights and be subject to the restrictions stated in this title.

13-1302. RIGHT-OF-WAY OF PEDESTRIANS WHEN INTERSECTION IS REGULATED. No vehicle shall cross a crosswalk where traffic is regulated by a police officer or a system of traffic control signals until pedestrians who have properly commenced to cross the street have completed their passage across in front of such vehicles, and any vehicle permitted to turn to either right or left shall yield the right-of-way to all pedestrians who are proceeding on crosswalks in a direction authorized by the officer or traffic signal, and failure to yield such right-of-way shall be a violation of this section.

13-1303. RIGHT-OF-WAY OF PEDESTRIANS WHEN AN INTERSECTION IS NOT REGULATED.

1. Where traffic control signals are not in place or in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to yield to a pedestrian crossing a roadway within a crosswalk when the pedestrian is upon the half of the roadway which the vehicle is traveling, or when the

pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

2. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.
3. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake or pass such stopped vehicle.

13-1304. CROSSING AT OTHER THAN CROSSWALKS.

1. Every pedestrian crossing a roadway at any point other than within a marked or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles on the roadway.
2. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead crossing has been provided shall yield the right-of-way to all vehicles on the roadway.
3. Between adjacent intersections at which traffic-control devices are in operation, pedestrians shall not cross at any place except in a marked crosswalk.
4. No pedestrians shall cross a roadway other than on a crosswalk in any business district in the City of West Fargo.
5. No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

13-1305. PEDESTRIANS TO USE RIGHT HALF OF CROSSWALK. Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(Source: North Dakota Cent. Code §39-10-32)

13-1306. BLIND PERSONS RIGHT-OF-WAY. The driver of any vehicle shall yield the right-of-way to any blind pedestrian carrying a clearly visible white cane or accompanied by a guide dog.

Blind pedestrians, when carrying a white cane or stick, by holding out horizontally such white cane or stick in the direction they desire to travel over any crosswalks on any street, avenue, alley or other public highway in the City of West Fargo, shall have the right-of-way over all other pedestrians and vehicles, except those vehicles as are defined in Section 13-0101(1)(a), except that all blind persons at intersections governed by traffic control devices shall be subject to the same rules as apply to other pedestrians.

Any driver of a vehicle, operator of a motor-driven vehicle, or pedestrian who is not blind who approaches or comes in contact with a blind person on the streets of the City of West Fargo or any blind person carrying such white cane or stick, shall, if conditions of traffic or safety of any blind person shall require, immediately stop and take such precaution before proceeding, as may be necessary to avoid accident or injury or be necessary to protect the blind person.

The words "blind pedestrian" or "blind person" as used in this section shall mean persons wholly or so partially blind as to require mechanical, human, or other aid in the use of the streets of the City of West Fargo.

13-1307. OBEDIENCE OF PEDESTRIANS TO BRIDGE AND RAILROAD SIGNALS. No pedestrian may pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed.

(Source: North Dakota Cent. Code § 39-10-33.5)

13-1308. PEDESTRIANS WALKING ALONG ROADWAYS.

1. Where a sidewalk is provided and its use practicable, it shall be unlawful for any pedestrian to walk along or upon an adjacent roadway.
2. Where a sidewalk is not available, any pedestrian walking along or upon a highway shall walk only on a shoulder facing traffic which may approach from the opposite direction, as far as practicable from the edge of the roadway.
3. Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a highway shall walk as near as practicable to the outside edge of the roadway, and, if on a two-way roadway, shall walk only the left side of the roadway.
4. Except as otherwise provided for in this Chapter, any pedestrian upon a roadway shall yield the right-of-way to all vehicles upon the roadway.

13-1309. PEDESTRIANS SOLICITING RIDES OR BUSINESS.

1. No person may stand in a roadway for the purpose of soliciting a ride.
2. No person may stand in a roadway for the purpose of soliciting employment, business or contributions from the occupant of any vehicle.
3. No person may stand on or in proximity to a street or highway for the purpose of soliciting the watching of guarding of any vehicle while parked or about to be parked on a street or highway.

(Source: North Dakota Cent. Code § 39-10-34)

13-1310. BLOCKING TRAFFIC OF PEDESTRIANS. Vehicles shall not stop on cross walk so as to interfere with the passage of pedestrians.

13-1311. PEDESTRIANS NOT TO OBSTRUCT TRAFFIC. No persons shall singly or together stand in any street, or any footwalk, sidewalk, or alley, in the City of West Fargo so as to obstruct the free passage for pedestrians or vehicles; and any person or persons so standing shall move immediately and cease to obstruct said walk or street after being requested to do so by the chief of police or any police officer of the City of West Fargo.

13-1312. RIGHT TO CROSS STREET SAFELY: INTERFERENCE WITH VEHICLES. The roadbeds of streets are primarily intended for vehicles, but pedestrians have the right to cross them in safety, and all drivers of vehicles shall exercise all proper care not to injure pedestrians. The driver of a vehicle shall yield the right-of-way to any pedestrian on a sidewalk. Pedestrians when crossing a street shall not carelessly or maliciously interfere with the passing of vehicles.

13-1313. PLAYING ON STREETS PROHIBITED. No person shall play upon the streets, avenues or alleys or public grounds of the City of West Fargo except on such grounds or streets, as may be provided for such purposes, and this section shall apply to both business and residential areas.

13-1314. DRIVERS TO EXERCISE DUE CARE. Notwithstanding the foregoing provisions of this Chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

CHAPTER 13-14

ACCIDENTS

SECTIONS:

- 13-1401. Immediate Notice of Accidents.
- 13-1402. Written Report of Accident to City.
- 13-1403. Written Report of an Accident to State.
- 13-1404. Officer to Report.
- 13-1405. When Driver Unable to Report.
- 13-1406. Garages to Report.
- 13-1407. False Reports.

13-1401. IMMEDIATE NOTICE OF ACCIDENTS. The driver of a vehicle involved in an accident resulting in injury to or death of any person or damage of at least one thousand dollars shall immediately give notice of the accident to the local Police Department if the accident occurs within a municipality, otherwise to the office of the County Sheriff or the State Highway Patrol. The name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, must be furnished to the law enforcement officer investigating the accident. If the driver does not have the required information concerning insurance to furnish to the investigating law enforcement officer, then within five (5) days of the accident the driver shall supply that information to the Driver's License Division in the form the division requires.

(Source: North Dakota Century Code Section 39-08-09)

13-1402. WRITTEN REPORT OF ACCIDENT TO CITY. The driver of a vehicle which is in any manner involved in an accident resulting in bodily injury to or death of any person or accident shall forward a written report of such accident to the police department of the City of West Fargo on forms provided by the City of West Fargo. The provisions of this section shall not be applicable when the accident has been investigated at the scene by a police officer while such officer was present thereat.

13-1403. WRITTEN REPORT OF AN ACCIDENT TO STATE. The driver of a vehicle involved in an accident resulting in injury to or death of any person, or property damage to an apparent extent of at least \$1,000, shall immediately give notice of the accident to the local police department if the accident occurs within the municipality, otherwise to the office of the county sheriff or the state highway patrol. Any person who violates this section must be assessed a fine of \$50. The name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the

driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, must be furnished to the law enforcement officer investigating the accident. If the driver does not have the required information concerning insurance to furnish the investigating law enforcement officer, then within five (5) days of the accident the driver shall supply that information to the Driver's License Division in the form the Division requires. The director may suspend the license or permit to drive and any nonresident operating privileges of any person failing to comply with the duties as provided in Sections 39-08-06 through 39-08-09 of the North Dakota Century Code until those duties have been fulfilled, and the director may extend the suspension not to exceed thirty (30) days.

(Source: North Dakota Cent. Code § 39-08-09)

13-1404. OFFICER TO REPORT. Every law enforcement officer who in the regular course of duty investigates a motor vehicle accident either at the time or at the scene of the accident or thereafter by interviewing the participants, or witnesses, shall promptly make a written report in duplicate to the traffic division of the police department. Said officer upon completion of investigation shall issue and affix to each of the cars involved a "damaged car release sticker".

13-1405. WHEN DRIVER UNABLE TO REPORT.

1. An accident notice is not required from any person who is physically incapable of making the report during the period of such incapacity.
2. Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall make or cause to be given the notice not given by the driver.
3. Whenever the driver is physically incapable of giving notice of an accident and such driver is not the owner of the vehicle, then the owner of the vehicle involved shall within five (5) days after learning of the accident give such notice and insurance information not given by the driver.

(Source: North Dakota Cent. Code § 39-08-11)

13-1406. GARAGES TO REPORT. The person in charge of any garage or repair shop located in the City of West Fargo to which is brought any motor vehicle which shows evidence of being involved in a reportable accident as provided in Section 13-0801 of this title or of being struck by any bullet, if said vehicle does not have a "damaged car release sticker" attached thereto or if said vehicle

has a bullet hole therein, shall immediately make a report to the police department. Said report shall include the license plate number and the name and address of owner or operator of such vehicle. If said vehicle does have a "damaged car release sticker" attached thereto no report to the police department is necessary. Stickers on such vehicles are not to be removed until repairs are completed but must be removed before the vehicle is released to the owner or operator.

13-1407. FALSE REPORTS. No person shall give information reports as required in Sections 13-1401, 13-1404, 13-1406, 13-0204 and 13-0205 of this Chapter knowing or having reason to believe that such information is false.

CHAPTER 13-15

EQUIPMENT OF VEHICLES - SIZE, WEIGHT, HEIGHT AND LOAD RESTRICTIONS

SECTIONS:

- 13-1501. Lamp or Flag on Projecting Load.
- 13-1502. Restrictions as to Tire Equipment.
- 13-1503. Horns and Warning Devices.
- 13-1504. Brakes on Motor Vehicles and Motorcycles: Requirements.
- 13-1505. Mirrors.
- 13-1506. Windshields Must Be Unobstructed and Equipped With Wipers.
- 13-1507. Mufflers Required.
- 13-1508. Vehicle to be Constructed to Prevent Sifting or Leaking Loads.
- 13-1509. Lamps and Lights Must Conform to State Law.
- 13-1510. Front and Rear Lamps to be Lighted at Certain Times.
- 13-1511. Arrest for Improperly Adjusted Headlamps Certificate of Conformance a Defense.
- 13-1512. Spot Lamps: Limitations on Number and Use.
- 13-1513. Trailers and Towed Vehicles.
- 13-1514. Trailer to be Equipped with Reflectors or Tail Lights.
- 13-1515. Flashing Lights, Prohibition.
- 13-1516. Red, Green or Yellow Lights Visible from in Front of Vehicle Prohibited: Exceptions.
- 13-1517. Proper Equipment Required on Vehicles.
- 13-1518. General Regulations as to Loading of Motor Vehicles.
- 13-1519. Size, Weight and Load Restrictions of Vehicles Operated within the City.
- 13-1520. Regulating Movement of Tractors, Heavy Vehicles and Long Vehicles on Pavement.
- 13-1521. Permits for Excessive Size and Weight.
- 13-1522. Trucks Prohibited on Certain Streets - Truck Routes Established - Maps and Signs Required.
- 13-1523. Restricted Use of Streets and Highways.
- 13-1524. Peace Officer or Other Agent may Weigh Vehicle and Require Removal of Excess Load.

Subsections:

- 13-1524.1. Impounding Overweight Vehicle
- 13-1524.2. Impounding Receipt - Information
- 13-1524.3. Impounding Notice - Perishables
- 13-1524.4. Civil Complaint
- 13-1524.5. Voluntary Statement of Extraordinary Road Use Fee Charges
- 13-1524.6. Mailing Complaint
- 13-1524.7. Cash Bond - Holding
- 13-1524.8. Trial - Charges
- 13-1524.9. Payment of Charges -Confiscation - Sale

- 13-1524.10 Payment - Effect
- 13-1524.11 Proceeds of Sale
- 13-1525. Restrictions Upon the Use of Streets by Certain Vehicles.
- 13-1526. Load Restrictions Upon Vehicles Using Certain Highways.
- 13-1527. Modification of Motor Vehicle.
- 13-1528. Law Enforcement Radio Equipment Prohibited on Private Vehicles.

13-1501. LAMP OR FLAG ON PROJECTING LOAD. Whenever the load upon any vehicle extends to the rear four feet [121.92 centimeters] or more beyond the bed or body of the vehicle there must be displayed at the extreme rear end of the load, at the times specified in section 39-21-01 of the North Dakota Century Code, a red light or lantern plainly visible from a distance of at least six hundred feet [182.88 meters] to the sides and rear. The red light or lantern required under this section must be in addition to the red rear light required upon every vehicle. At any other time there must be displayed at the extreme rear end of a load a red flag or cloth not less than twelve inches [30.48 centimeters] square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

(Source: North Dakota Cent. Code § 39-21-13)

13-1502. RESTRICTIONS AS TO TIRE EQUIPMENT. Every tire on a vehicle moved on any street or highway within the City of West Fargo shall have rubber on its entire traction surface.

No tire, wheel, or track on a vehicle moved on a street or highway shall have on its periphery any block, stud, flange, pleat or spike, or any other protuberance of any material other than rubber, or other material approved by the City Engineer, which projects beyond the tread of the traction surface of the tire, wheel or track, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the street or highway, and except also that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice or other conditions. It shall also be permissible to use, from October 15 to April 15, pneumatic tires which have metal studs which do not project more than one-sixteenth of an inch beyond the tread of the traction surface of the tire.

Fines for violation of this section may be set by resolution of the City Commission of the City of West Fargo.

Source: Ord. 1041, Sec. 8 (2015)

13-1503. HORNS AND WARNING DEVICES. Every motor vehicle when operative upon a street or highway shall be equipped with a horn in good working order capable of emitting sound audible under normal

conditions from a distance of not less than two hundred feet; and it shall be unlawful except as otherwise provided in this section, for any vehicle equipped with, or for any person to use upon a vehicle a siren, exhaust, compression or plug whistle or for any person, at any time, to use a horn otherwise and as a reasonable warning, or to make unnecessary or unreasonable loud or harsh sounds by means of a horn or other warning device.

Every police, or fire department, and fire patrol vehicle and every ambulance used for emergency calls shall be equipped with a bell, siren or an exhaust whistle.

13-1504. BRAKES ON MOTOR VEHICLES AND MOTORCYCLES: REQUIREMENTS. Every motor vehicle, when operated upon a street, shall be equipped with brakes adequate to control the movement and to stop and to hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels, and shall be so constructed that no part which is liable to failure shall be common to the two. A motorcycle need be equipped with only one brake. All such brakes shall be maintained in good working order.

13-1505. MIRRORS. On and after January 1, 1964, every motor vehicle, operated singly or when towing any other vehicle, must be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet (60.96 meters) to the rear of such motor vehicle.

(Source: North Dakota Cent. Code § 39-21-38)

13-1506. WINDSHIELDS MUST BE UNOBSTRUCTED AND EQUIPPED WITH WIPERS.

1. No person shall drive a motor vehicle with any sign, poster, frost, condensation, or other nontransparent material upon or in place of the front windshield, sidewings, side or rear windows of such motor vehicle, other than a certificate or other paper required to be so displayed by law.
2. The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.
3. Every windshield wiper upon a motor vehicle shall be maintained in good working order.

13-1507. MUFFLERS REQUIRED. PREVENTION OF NOISE.

1. Every motor vehicle must at all times be equipped with a muffler in good working order and in constant operation

to prevent excessive or unusual noise and annoying smoke, and no person may use a muffler cutout, bypass, or similar device upon a motor vehicle on a highway.

2. The engine and power mechanism of every motor vehicle must be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

(Source: North Dakota Cent. Code § 39-21-37)

13-1508. VEHICLE TO BE CONSTRUCTED TO PREVENT SIFTING OR LEAKING LOADS. No vehicle may be driven or moved on any highway unless it is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway. No person may operate on any highway any vehicle with any load unless the load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

(Source: North Dakota Cent. Code § 39-21-44.1)

13-1509. LAMPS AND LIGHTS MUST CONFORM TO STATE LAW. It shall be unlawful for any person to operate any motor vehicle within the City of West Fargo, unless such motor vehicle is properly equipped with lamps and lights as prescribed by the laws of this State.

13-1510. FRONT AND REAR LAMPS TO BE LIGHTED AT CERTAIN TIMES. Subject to exceptions with respect to parked vehicles, every vehicle upon a highway within this state must display lighted headlamps and tail lamps, and illuminating devices as required in this chapter for different classes of vehicles as follows:

1. At any time from sunset to sunrise, and every farm tractor upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise;
2. At any time when it is raining, snowing, sleeting, or hailing or during other adverse driving conditions and these conditions do not render a person or vehicle on the highway clearly discernible at a distance of one thousand feet [304.8 meters] ahead; or
3. At any other time when visibility is impaired by weather, smoke, fog, or other conditions, or when there is insufficient light to render a person or vehicle on the highway clearly discernible at a distance of one thousand feet [304.8 meters] ahead.

Stop lights, turn signals, and other signaling devices must be lighted as prescribed for the use of these devices.

Source: Ord. 906, Sec. 8 (2011)

13-1511. ARREST FOR IMPROPERLY ADJUSTED HEADLAMPS - CERTIFICATE OF CONFORMANCE A DEFENSE. The driver of any motor vehicle equipped with approved headlamps, auxiliary driving lamps, rear lamps, or signal lamps who is arrested upon the charge that such lamps are adjusted improperly or are equipped with bulbs of a candle power not approved for use therewith, must be allowed forty-eight hours within which to bring such lamps into conformance with the requirements of this chapter. It is a defense to any such charge that the person arrested produces in court or submits to the state's attorney a certificate showing that within forty-eight hours after such arrest such lamps have been made to conform with the requirements of this chapter.

(Source: North Dakota Cent. Code § 39-21-24)

13-1512. SPOT LAMPS: LIMITATIONS ON NUMBER AND USE. Any motor vehicle may be equipped with not to exceed two spot lamps. Every lighted spot lamp shall be aimed and used upon approaching another vehicle so that no part of the beam will be directed to the left of the center of the street or highway nor more than one hundred feet ahead of the vehicle.

13-1513. TRAILERS AND TOWED VEHICLES. The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a street or highway, shall not exceed fifteen feet in length from any vehicle to the other. Whenever such connection consists of a chain, rope, or cable, there shall be displayed upon such connection a red flag or other signal or cloth not less than twelve inches square.

13-1514. TRAILER TO BE EQUIPPED WITH REFLECTORS OR TAIL LIGHTS. No trailer or semi-trailer shall be transported or operated in the City of West Fargo unless it is equipped with approved reflectors not less than three inches in diameter or with tail lights.

13-1515. FLASHING LIGHTS, PROHIBITION. Flashing lights are prohibited except on an authorized emergency vehicle, school bus, snow removal equipment or on any vehicle as a means of indicating a right or left turn, or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing.

13-1516. RED, GREEN OR YELLOW LIGHTS VISIBLE FROM IN FRONT OF VEHICLE PROHIBITED: EXCEPTIONS. No person shall drive or move any vehicle upon any street or highway with any red, green or yellow light thereon visible from directly in front thereof. This section shall not apply to vehicles defined in Section 13-0101 and Section 13-0916.

13-1517. PROPER EQUIPMENT REQUIRED ON VEHICLES. It is an infraction, which shall subject the violator to the penalties set forth in Section 1-0211, for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or the North Dakota Century Code, or which is equipped in any manner in violation of this chapter, or any provision of the North Dakota Century Code, or for any person to do any act forbidden or fail to perform any act required under this chapter, or under the North Dakota Century Code.

13-1518. GENERAL REGULATIONS AS TO LOADING OF MOTOR VEHICLES. No person shall:

1. Ride or stand upon the running board or exterior of any moving vehicle. This provision shall not apply to police officers, firemen or other City employees, while in performance of their duties.
2. Drive a vehicle containing more passengers than the seating capacity of such vehicle.
3. Allow any part of the body to protrude beyond the limits of the vehicle while the vehicle is in motion, except to signal change of direction as provided in this title.
4. Drive a vehicle loaded with iron or other material likely to produce an annoying sound without using proper precautions to minimize such annoying sound.

13-1519. SIZE, WEIGHT AND LOAD RESTRICTIONS OF VEHICLES OPERATED WITHIN THE CITY. Vehicles operated on a highway in this state may not exceed the following width, height, or length limitations:

1. A total outside width, including load thereon, of eight feet six inches [2.59 meters]. This limitation does not apply to:
 - a. Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten feet [3.05 meters] in width when being moved by contractors or resident carriers.
 - b. Implements of husbandry being moved by resident farmers, ranchers, dealers, or manufacturers between sunrise and sunset. Furthermore, the limitation does not apply to implements of husbandry being moved between sunset and sunrise by

resident farmers, ranchers, dealers, or manufacturers on public state, county, or township highway systems other than interstate highway systems.

- c. Hay in the stack or bale being moved along the extreme right edge of a roadway between sunrise and sunset by someone other than a commercial mover.
- d. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, commercial movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, whether operating under their own power or being transported by another vehicle, commercial movement of portable grain cleaners, and the commercial movement of hay grinders, which may be moved on the highway after obtaining a seasonal permit issued by the highway patrol. The highway patrol shall issue seasonal permits that are valid during daylight hours on any day of the week, or that are valid at all times for the movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, to any commercial entity otherwise qualified under this subdivision. Self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators operating under their own power between sunset and sunrise must display vehicle hazard warning signal lamps as described in subsection 3 of section 39-21-19.1. The seasonal permit is in lieu of registration requirements for the permit period. No seasonal permit may be issued, unless proof of financial responsibility in a minimum of three hundred thousand dollars is filed and the appropriate permit fee is paid. The seasonal permit may also be issued for hauling hay bales with vehicles or vehicle combinations other than those designed specifically for hauling haystacks. This seasonal permit, however, will not be in lieu of registration requirements. All permit fees must be deposited in the state highway distribution fund.
- e. Safety devices that the highway patrol determines are necessary for the safe and efficient operation of motor vehicles may not be included in the calculation of width.
- f. Any nonload carrying safety appurtenance as determined by the highway patrol which extends no more than three inches [7.62 centimeters] from each side of a trailer is excluded from the measurement

of trailer width. The width of a trailer is measured across the sidemost load carrying structures, support members, and structural fasteners.

- g. The highway patrol may adopt reasonable rules for those vehicles exempted from the width limitations as provided for in this subsection.
- 2.
 - a. A height of fourteen feet [4.27 meters], whether loaded or unloaded. This height limitation does not affect any present structure such as bridges and underpasses that are not fourteen feet [4.27 meters] in height.
 - b. The limitation in subdivision (a) does not apply to vehicles that are at most fifteen feet six inches [4.72 meters] high when all of the following apply:
 - (1) The vehicle is an implement of husbandry and is being moved by a resident farmer, rancher, dealer, or manufacturer.
 - (2) The trip is at most sixty miles [96.56 kilometers].
 - (3) The trip is between sunrise and sunset.
 - (4) None of the trip is on an interstate highway.
- 3. A length limitation as follows:
 - a. A single unit vehicle with two or more axles including the load thereon may not exceed a length of fifty feet [15.24 meters].
 - b. A combination of two units including the load thereon may not exceed a length of seventy-five feet [22.86 meters].
 - c. A combination of three or four units including the load thereon may not exceed a length of seventy-five feet [22.86 meters], subject to any rules adopted by the director that are consistent with public highway safety. The rules do not apply to a three-unit combination consisting of a truck tractor and semitrailer drawing a trailer or semitrailer.
 - d. A combination of two, three, or four units including the load thereon may be operated on all four-lane divided highways and those highways in the state designated by the director and local

authorities as to the highways under their respective jurisdictions and may not exceed a length of one hundred ten feet [33.53 meters], subject to any rules adopted by the director that are consistent with public highway safety.

e. Length limitations do not apply to:

- (1) Building moving equipment.
- (2) Emergency tow trucks towing disabled lawful combinations of vehicles to a nearby repair facility.
- (3) Vehicles and equipment owned and operated by the armed forces of the United States or the national guard of this state.
- (4) Structural material of telephone, power, and telegraph companies.
- (5) Truck-mounted haystack moving equipment, provided such equipment does not exceed a length of fifty-six feet [17.07 meters].
- (6) A truck tractor and semitrailer, or truck tractor, semitrailer and the trailer when operated on the interstate highway system or parts of the federal aid primary system as designated by the director, only when federal law requires the exemption.
- (7) Safety and energy conservation devices and any additional length exclusive devices as determined by the highway patrol for the safe and efficient operation of commercial motor vehicles. Length exclusive devices are appurtenances at the front or rear of a commercial motor vehicle semitrailer or trailer, whose function is related to the safe and efficient operation of the semitrailer or trailer.

f. The length of a trailer or semitrailer, including the load thereon, may not exceed fifty-three feet [16.15 meters] except that trailers and semitrailers titled and registered in North Dakota prior to July 1, 1987, and towed vehicles may not exceed a length of sixty feet [18.29 meters].

(Source: North Dakota Cent. Code § 39-12-04)

WEIGHT LIMITATIONS FOR VEHICLES ON HIGHWAYS OTHER THAN THE INTERSTATE SYSTEM: A person may not operate on a highway, which is not part of the interstate system, any vehicle:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle, with a maximum of forty-eight thousand pounds [21772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, the gross weight of which exceeds that determined by the formula of:

$$W = 500 \left(\frac{L}{N-1} N + 12N + 36 \right)$$

where W equals the maximum gross weight in pounds on any vehicle or combination of vehicles; L equals distance in feet between the two extreme axles of any vehicle or combination of vehicles; and N equals the number of axles of any vehicle or combination of vehicles under consideration. The gross weight on state highways may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms] unless otherwise posted and on all other highways the gross weight may not exceed eighty thousand pounds [36287.39 kilograms] unless designated by local authorities for highways under their jurisdiction for gross weights not to exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. Local authorities are encouraged to assess all roads under their jurisdiction and designate the roads for the appropriate weight limits allowed under this subsection.

3. The gross weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption. The exemption may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. For every vehicle approved for exemption the highway patrol shall issue a nontransferable permit valid for one year. The highway patrol may charge an administrative fee for the permit.

4. The director, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing a specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The permits must provide only for the movement of agricultural products from the field of harvest to the point of initial storage site, and for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.
5. The director, and local authorities, as to highways under their respective jurisdictions, may issue permits authorizing all vehicles carrying potatoes or sugar beets to exceed weight limitations stated in subsections 1 and 2 by ten percent during the period from July fifteenth to December first. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.

(Source: North Dakota Cent. Code § 39-12-05.3)

13-1520. REGULATING MOVEMENT OF TRACTORS, HEAVY VEHICLES, AND LONG VEHICLES ON PAVEMENT. No person, firm or corporation shall move, or cause to be moved, over the paved streets, sidewalks, crosswalks, bikepaths, curb and gutters, culverts, bridges and viaducts, within the City of West Fargo, any motor vehicle or object drawn by motor vehicle which is in violation of Sections 13-1502, 13-1519 through 13-1523, or in violation of any restrictions set forth in a resolution passed by the City Commission pursuant to Section 13-1519, except under the direction and written permission of the City Commissioners of the City of West Fargo or the Public Works Director, as provided in Section 13-1521. Any violators shall pay or cause to be paid to said City, upon demand, any and all damages done to the paving, sidewalks, crosswalks, bikepaths, curbs and gutters, culverts, bridges and viaducts.

Fines for violation of this section may be set by resolution of the City Commission of the City of West Fargo.

Source: Ord. 1041, Sec. 9 (2015)

13-1521. PERMITS FOR EXCESSIVE SIZE AND WEIGHT. The Public Works Director may, under such policies as the City may establish by resolution or ordinance, upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size and weight exceeding the maximum specified in this title upon any street or highway under the jurisdiction of and for the maintenance of which the body granting permit is responsible. Every such permit shall be issued for a single trip and may designate the route to be traversed and contain other restrictions or conditions deemed necessary by the body granting such permit. Every such permit shall be carried in the vehicle to which it refers and shall be opened to inspection by any peace officer, and it shall be unlawful for any person to violate any of the terms and conditions of such special permit. The fees for such special permit shall be established by resolution by the City Commission.

13-1522. TRUCKS PROHIBITED ON CERTAIN STREETS - TRUCK ROUTES ESTABLISHED - MAPS AND SIGNS REQUIRED.

1. No truck or commercial vehicle exceeding in weight of ten thousand pounds per axle or configured with three or more axles, shall be operated in the City of West Fargo, except upon truck routes designated as hereinafter provided in subsection 2 of this section; provided, that this ordinance shall not prohibit:
 - a. Such vehicles from operating upon other City streets when delivering or picking up materials or merchandise, provided entrance or exit to or from such street is made at the nearest intersection; through streets as established elsewhere in the West Fargo City Ordinances shall be considered as secondary truck routes and must be used in preference to other streets whenever possible.
 - b. The operation of trucks owned or operated by the City of West Fargo; trucks owned or operated by power companies and telephone companies franchised in West Fargo or trucks owned and operated by any contractor or material supplier while under contract with the City and engaged in the repair, maintenance or construction of streets, street improvements or street utilities within the City.
 - c. The operation of class A emergency vehicles, as defined in the traffic ordinances of the City of West Fargo, upon any street in the City.
 - d. Trucks making more than one delivery within the City of West Fargo on any one trip may take the

most direct route between one delivery and the next.

Source: Ord 811, Sec. 1 (2007).

2. Truck routes shall be established by resolution of the Board of City Commissioners, after notice and hearing. The notice shall be by one publication in the official newspaper of the City at least 10 days prior to the date of the hearing. The truck routes, as established by the Board of City Commissioners, shall be stated in the resolution and on an official map which shall be kept and maintained in the office of the City Auditor and shall be available for public inspection.
3. On each street or avenue designated as a truck route in accordance with subsection 2 above, such street or avenue shall be posted with appropriate signs.

13-1523. RESTRICTED USE OF STREETS AND HIGHWAYS. Notwithstanding Sections 13-1519 through 13-1522, the Public Works Director of the City of West Fargo may prohibit the operation of vehicles upon any street or highway or impose restrictions as to the weight of vehicles when operated upon any street or highway under the jurisdiction of and for the maintenance of which the City is responsible, whenever any said street or highway by reason of deterioration, stage of construction, rain, snow or other conditions could be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights allowed thereon reduced. The Public Works Director shall have the authority to impose such restrictions at any time when in the discretion of the Public Works Director such limitations are needed. The prohibitions or restrictions and the lifting thereof shall be done in a writing which shall be filed with the City Auditor and mailed to all City Commission members. In addition, the Public Works Director, when exercising any such authority, shall erect or cause to be erected and maintained, signs designating the weight restrictions or prohibition of use at each end of that portion of any street or highway affected by the restrictions or prohibitions, and the restrictions or prohibitions shall not be effective until or unless such signs are erected and maintained. Once such restrictions are in place and posted, such restrictions or prohibitions shall remain in effect until lifted by the Public Works Director, or until they are removed or altered by action of the City Commission of the City of West Fargo. The City Commission shall also have the authority, by resolution, to prohibit the use, or place weight restrictions on any street or highway under the jurisdiction of the City, which prohibitions and restrictions shall be designated by appropriate signs placed at each end of that portion of any street or highway affected thereby. In addition, the City, will set weight restrictions by resolution which will automatically apply City-wide when Cass County imposes its spring weight limit road restrictions. These restrictions shall

be posted at the main entrances to the City at the discretion of the Public Works Director.

13-1524. PEACE OFFICER OR OTHER AGENT MAY WEIGH VEHICLE AND REQUIRE REMOVAL OF EXCESS LOAD. Any peace officer or designated agent of the City or City-designated personnel having reason to believe that the weight or size of a vehicle and load is unlawful is authorized to weigh or measure the same, either by means of portable or stationary scales, and may require that such vehicle be driven to the nearest scale. The officer or other designated person may then require the driver to unload immediately such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum therefor by such authority.

13-1524.1. IMPOUNDING OVERWEIGHT VEHICLE. Any vehicle found to have been moved or used upon any highway, street, alley or other public way within the City at a weight exceeding the limitations as specified in any ordinance or resolution adopted by the City may be impounded by any peace officer, designated agent of City, or City-designated personnel and taken to a warehouse, garage or other facility for storage.

13-1524.2. IMPOUNDING RECEIPT - INFORMATION. A receipt must be given by the peace officer or other person impounding the vehicle, to the driver or person in charge of such vehicle. Such receipt must identify as nearly as possible, the owner of the vehicle and cargo, the driver or person in charge of such vehicle, the cargo, the place vehicle is to be stored during impoundment, the weight of the loaded vehicle and the name and address of the impounding officer. Information as to the owner of the vehicle and cargo must be obtained from the driver or person in charge of the vehicle.

13-1524.3. IMPOUNDING NOTICE - PERISHABLES. The impounding officer shall notify the owner or owners, if they can be found, by wire or telephone, of the impoundment and charges involved. If the cargo consists of perishables, the impounding officer shall use reasonable diligence in assisting the operator or owner in finding suitable storage facilities for such perishables, but all risk of loss or damage to such perishables must be upon the owner, operator, or lessee of such vehicle.

13-1524.4. CIVIL COMPLAINT. The City Attorney of the City shall, if no settlement is made under the next succeeding section, immediately prepare and file a civil complaint on behalf of the City for the purpose of recovering charges for the extraordinary use of the highways, streets, alleys or other public roadways of the City.

13-1524.5. VOLUNTARY SETTLEMENT OF EXTRAORDINARY ROAD USE FEE CHARGES. Before the complaint is issued pursuant to the preceding section, the owner, or the owner's driver or agent, may voluntarily pay the amount of the extraordinary road use fee, or may provide

proof of surety coverage to ensure payment of the extraordinary road use fee, provided under Section 13-1524.7, plus any towing or storage costs. Any settlement, whether made by the owner, or the owner's driver or agent, must be presumed to be of a voluntary nature. A peace officer or a peace officer's designee is authorized to receive the settlement payment on behalf of the City. The extraordinary road use fees must be remitted to the City Auditor's office.

13-1524.6. MAILING COMPLAINT. A copy of the complaint must be served upon the driver or person in charge of the vehicle and a copy must be sent by registered or certified mail to the owner of the vehicle, if the address of such owner is known.

13-1524.7. CASH BOND - HOLDING. Unless a cash bond is furnished in an amount sufficient to cover the charge for extraordinary use of highways, streets, alleys or other public roadway, as provided in the next succeeding section, together with the costs which may be collectible under any subsequent settlement made pursuant to this section, said vehicle must be held until a trial of the case can be held before the district court.

13-1524.8. TRIAL - CHARGES. At the trial of the action, the court shall hear testimony concerning the facts, and if it is found that such vehicle or vehicles were moved upon the highways, streets, alleys or other public roadways of the City at a weight in excess of the limitations imposed under the provisions of this section, charges for the extraordinary use of the highways, streets, alleys, or roadways must be assessed as follows:

1. The storage charges and costs of the action must be assessed; and
2. An additional charge for excess weight must be assessed as follows:

1 to 1,000 lbs [.45 to 453.59 kg]	\$20.00
1,001 to 2,000 lbs [454.05 to 907.18 kg]	40.00
2,001 to 3,000 lbs[907.64 to 1,360.78 kg]	60.00
3,001 to 4,000 lbs [1,361.23 to 1,814.37 kg]	140.00
4,001 to 5,000 lbs [1,814.82 to 2,267.96 kg]	220.00
5,001 to 6,000 lbs [2,268.41 to 2,721.55 kg]	305.00
6,001 to 7,000 lbs [2,722.01 to 3,175.14 kg]	380.00
7,001 to 8,000 lbs [3,175.60 to 3,628.74 kg]	495.00
8,001 to 9,000 lbs [3,629.19 to 4,082.33 kg]	575.00
9,001 to 10,000 lbs [4,082.78 to 4,535.92 kg]	655.00
10,001 to 11,000 lbs [4,536.37 to 4,989.51 kg]	1,100.00

11,001 to 12,000 lbs [4,989.97 to 5,443.10 kg]	1,200.00
12,001 to 13,000 lbs [5,443.56 to 5,896.70 kg]	1,300.00
13,001 to 14,000 lbs [5,897.15 to 6,350.29 kg]	1,680.00
14,001 to 15,000 lbs [6,350.74 to 6,803.88 kg]	1,800.00
15,001 to 16,000 lbs [6,804.33 to 7,257.47 kg]	1,920.00
16,001 to 17,000 lbs [7,257.93 to 7,711.06 kg]	2,550.00
17,001 to 18,000 lbs [7,711.52 to 8,164.66 kg]	2,700.00
18,001 to 19,000 lbs [8,165.11 to 8,618.25 kg]	2,850.00
19,001 to 20,000 lbs [8,618.70 to 9,071.84 kg]	3,000.00
20,001 to 21,000 lbs [9,072.29 to 9,525.43 kg]	4,200.00
21,001 to 22,000 lbs [9,525.89 to 9,979.02 kg]	4,400.00
22,001 to 23,000 lbs [9,979.48 to 10,432.62 kg]	4,600.00
23,001 to 24,000 lbs [10,433.07 to 10,886.21 kg]	4,800.00
24,001 to 25,000 lbs [10,886.66 to 11,339.80 kg]	5,000.00
25,001 to 26,000 lbs [11,340.25 to 11,793.40 kg]	5,200.00
26,001 to 27,000 lbs [11,793.86 to 12,246.99 kg]	5,400.00
27,001 to 28,000 lbs [12,247.45 to 12,700.59 kg]	5,600.00
28,001 to 29,000 lbs [12,701.04 to 13,154.18 kg]	5,800.00
29,001 to 30,000 lbs [13,154.63 to 13,607.77 kg]	6,000.00

An additional charge of \$200 for every 1,000-lb [453.59 kg] increase over 30,000 lbs [13,607.77 kg] consistent with the above formula.

Source: Ord. 701, Sec. 1 (2003); Ord. 731, Sec. 2 (2004)

13-1524.9. PAYMENT OF CHARGES - CONFISCATION - SALE. If the charges and costs as provided in the preceding section are not paid immediately from a cash bond previously posted or other cash payment, the judge shall order the vehicle confiscated and sold by the sheriff of the county at a public sale to the highest bidder and the proceeds applied to the payment of the charges and costs assessed under the provisions of this section.

13-1524.10. PAYMENT - EFFECT. The payment of charges may not be construed as a payment for the future use of highways, streets, alleys and other public roadways of the City by vehicles carrying excess loads.

13-1524.11. PROCEEDS OF SALE. The proceeds of sale must be applied first to the payment of the costs of the proceeding, including any allowable attorney's and witness fees and costs, and next to the payment of the charges assessed. Such charges must be remitted to the City Auditor to be credited to the City general fund. The balance of the proceeds of any sale after the payment of

costs and charges must be paid over by the sheriff to the person entitled thereto as determined by the court, or must be deposited with the clerk of the court for such payment.

13-1525. RESTRICTIONS UPON THE USE OF STREETS BY CERTAIN VEHICLES. The police department is hereby authorized, subject to a resolution of approval by the Board of City Commissioners, to determine and designate those heavily traveled streets upon which shall be prohibited the use of the roadway by bicycles, horsedrawn vehicles or other non-motorized traffic and shall erect appropriate signs giving notice thereof. A disobedience of any restriction and any sign so posted shall be a violation of this title.

13-1526. LOAD RESTRICTIONS UPON VEHICLES USING CERTAIN HIGHWAYS. When signs are erected giving notice thereof, no person shall operate any vehicle with a gross weight in excess of the amount specified on said sign at any time upon any of the streets or parts of streets so posted.

13-1527. MODIFICATION OF MOTOR VEHICLE. Except as otherwise provided in this section, a person may not operate upon a public highway a motor vehicle of a type required to be registered under the laws of this state with a weight of seven thousand pounds [3175.14 kilograms] or less with alterations or changes from the manufacturer's original design of the suspension, steering, or braking system of the motor vehicle. The weight must be computed on the basis of the unmodified and unloaded weight of the motor vehicle and without regard to any ballast that may be placed in the vehicle. As to bumpers, motor vehicle height, and permitted modifications, the following requirements also apply:

1. The motor vehicle must be equipped with front and rear bumpers.
2. The maximum body height permitted for the motor vehicle is forty-two inches [106.68 centimeters]. Measurement of body height is made from a level ground surface to the floor of the cargo area.
3. The maximum bumper height permitted is twenty-seven inches [68.58 centimeters]. Measurement of bumper height is made from a level ground surface to the highest point on the bottom of the bumper.
4. The vehicle may be modified in accordance with the following:
 - a. Any modifying equipment must meet specialty equipment marketing association standards.
 - b. If tires placed on a motor vehicle have a diameter greater than that of the tires on the motor vehicle

as manufactured, those tires must comply with department of transportation requirements.

- c. The maximum outside diameter permitted for tires is forty-four inches [111.76 centimeters].
 - d. A horizontal drop bumper may be used to comply with the bumper height requirement of subsection 3. The horizontal bumper must:
 - (1) Be at least three inches [7.62 centimeters] in vertical width;
 - (2) Extend the entire horizontal body width; and
 - (3) Be horizontal, load bearing, and attached to the vehicle frame to effectively transfer impact when engaged.
 - e. The maximum lift permitted in the suspension system is four inches [10.16 centimeters].
- 5. A person charged with violating this section has the burden of proceeding to show that the modifications are permitted under this section.
 - 6. Vehicles owned by law enforcement agencies, the military, firefighting agencies, and ambulances may be modified without regard to this section.
 - 7. The director may adopt rules to implement this section.

(Source: North Dakota Cent. Code § 39-21-45.1)

13-1528. LAW ENFORCEMENT RADIO EQUIPMENT PROHIBITED ON PRIVATE VEHICLES. It shall be unlawful for any person to equip or use in an automobile or any other motor vehicle, a radio equipped for transmitting and/or receiving on any frequency assigned to the City of West Fargo for law enforcement or police purposes by the Federal Communications Commission without first securing written authorization to do so from the Chief of Police of the City of West Fargo. This section shall not apply to receivers which are part of a two-way radio system, employees of a news media organization, or persons who hold a valid Federal Communications Commission license.

CHAPTER 13-16

PARKING

SECTIONS:

- 13-1601. Parallel Parking and Diagonal Parking.
- 13-1602. Obedience to Angle Parking Signs or Markings.
- 13-1603. Stopping, Standing or Parking Prohibited in Specified Places.
- 13-1604. Parking of Trucks, Truck Tractor, Semi-Trailer, or Commercial Trailers - Regulated; and Prohibition of Dollying Down of Semi-Trailers.
- 13-1605. Loading and Unloading Regulations for Trucks.
- 13-1606. Parking Limits.
- 13-1607. Chief of Police May Designate Ten Minute Parking Areas.
- 13-1608. Parking of Recreational Vehicles, Recreational Equipment and Recreational Trailers.
- 13-1609. Parking in Area Designated for Mobility Impaired Without Certificate.
- 13-1610. Motor Vehicle Left Unattended, Brakes to be Set.
- 13-1611. Unlawful to Park on Private Property.
- 13-1612. Restricted Parking in Recreation Areas.
- 13-1613. Parking Not to Obstruct Traffic.
- 13-1614. Parking for Certain Purposes Prohibited.
- 13-1615. No Stopping, Standing or Parking Near Hazardous or Congested Places.
- 13-1616. Stopping, Standing and Parking of Buses and Taxi Cabs Regulated.
- 13-1617. Restricted Use of Bus and Taxi Cab Stands.
- 13-1618. RESERVED FOR FUTURE USE.
- 13-1619. Parking Prohibited During Certain Hours on Certain Streets
- 13-1620. Parking Prohibited on Sidewalks or Boulevards.
- 13-1621. Parking Signs Required.
- 13-1622. Application of Chapter.
- 13-1623. Parking Privileges for Mobility Impaired Certificate Revocation.
- 13-1624. Regulations Not Exclusive.
- 13-1625. Penalty.
- 13-1626. Delinquent Tickets -- Impoundment of Vehicle.

13-1601. PARALLEL PARKING AND DIAGONAL PARKING. The owner, driver or person operating or in charge of any vehicle shall not permit the same to stand or be parked upon any street where there are adjacent curbs unless such vehicle is parallel with the street and the inside wheels not to exceed 18 inches from the right-hand curb or street line. Vehicles must be so parked as to economize parking space for all cases and be so placed as to form, where possible, continuous lines. The police department may, by signs, markers, paint or other devices, limit the parking area, and no

vehicle shall be parked wholly or partly outside the indicated and permitted parking area; provided that all vehicles shall be parked diagonally to the curb or any street or avenue if said street or avenue is posted or marked by the police department for said diagonal parking.

Where parking is permitted on one-way street the above regulations shall apply except that vehicles parking on the left side of the one-way street shall park parallel to the street and with the wheels on the left side of the automobile not to exceed 18 inches from the left curb or street line.

13-1602. OBEDIENCE TO ANGLE PARKING SIGNS OR MARKINGS. On those streets which have been signed or marked by the City for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of roadway indicated by such sign or marking.

13-1603. STOPPING, STANDING OR PARKING PROHIBITED IN SPECIFIED PLACES. No person shall stop, stand or park a vehicle except when necessary to avoid conflict with other traffic and in compliance with the law or the direction of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk;
2. Within an intersection;
3. In front of a public or private driveway;
4. Within ten feet of a fire hydrant;
5. On a crosswalk;
6. Within ten feet of a crosswalk at an intersection, except on through streets where it shall not be within 20 feet of a crosswalk;
7. Within 20 feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of the roadway;
8. Between a safety zone and the adjacent curb or within 15 feet of points immediately opposite the ends of a safety zone, unless the State Highway Department or local authority indicates a different length by signs or markings;
9. Within 15 feet of the nearest rail of a railroad crossing;
10. Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance

to any fire station within seventy-five feet of said entrance when proper sign posted;

11. Along side or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
12. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
13. Upon any bridge or other elevated structure upon a street or highway or within a street or highway tunnel;
14. At any place where official signs prohibit stopping.
15. Within 15 feet of a U.S. Postal Service mailbox between the hours of 8:00 a.m. and 5:00 p.m., Monday through Saturday.

13-1604. PARKING OF TRUCKS, TRUCK TRACTOR, SEMI-TRAILER, OR COMMERCIAL TRAILERS - REGULATED; AND PROHIBITION OF DOLLYING DOWN OF SEMI-TRAILERS.

1. No truck, truck tractor, semi-trailer, or commercial trailer shall be parked on any street, boulevard, or alley in any residential district of the City of West Fargo for a longer period than one hour; nor shall any such vehicle be parked overnight on any street, avenue, boulevard, or alley in any residential district of the City, or within 100 feet of any residence, condominium, or apartment building; provided, however, that such vehicles loading or unloading cargo may be parked on the streets or alleys long enough to complete their loading or unloading; and provided further that such restrictions shall not apply to any vehicle in use on any repair, maintenance, or construction project in progress on any such street, boulevard, or alley. "Commercial vehicle" as designated herein shall not include vehicles rated as less than one-ton.
2. No semi-trailer shall be dollied down, or detached from the truck tractor on any street, avenue, boulevard, or alley in any district of the City of West Fargo.
3. Parking of construction vehicles regulated. Notwithstanding the provisions of this chapter, whenever off-street parking is not available or practical, parking of construction vehicles as herein defined is permitted for the term and under the conditions set forth hereinafter. "Construction vehicles" are defined as vehicles or trailers being used in performing construction, remodeling, maintenance, siding or the like. Such vehicles may include pickups, trucks, trailers detached from the towing vehicle provided the trailers do

not exceed 30 feet in length, and vans. Such vehicles do not include, however, truck tractor or semi-trailers, but may include bumper-hitch or fifth-wheel construction-type trailers not exceeding 30 feet in length. The following conditions apply to any parking under this section:

- A. Parking is not allowed in "no parking" zones or any other prohibited area as set forth in city ordinance except as otherwise allowed by permit issued by the public works office.
 - B. Vehicles and/or trailers must be properly licensed as required by the state of North Dakota.
 - C. A trailer disconnected from the towing vehicle must have a properly sized pad placed under the dolly or jack to avoid damage to the street.
 - D. Street parking will be allowed only if appropriate measures are taken to insure public safety. Construction vehicles, equipment, and trailers shall conform to the respective commercial standards as described in Federal Motor Vehicle Safety Standard 108 (FMVSS 108). Additionally, channelization devices (e.g. cones) shall be used in advance of any trailer or equipment when work is in progress. The cones shall conform to section 3F.02 of the *Manual on Uniform Traffic Control Devices* (MUTCD). Taper lengths shall be determined in accordance with the current edition of *A Policy on Geometric Design of Highways and Streets* (green book).
 - E. Parking of a vehicle or trailer shall not be allowed directly across the street from another parked vehicle or trailer.
 - F. There shall be no parking allowed which would be in violation of any other ordinance of the City of West Fargo concerning parking regulations.
 - G. The owner's name, company name (if any), and the phone number shall be legibly indicated on any trailer or construction vehicle.
 - H. Twenty-eight inch cones or barrels with high-intensity sheeting around the entire perimeter of the trailer and/or equipment may be substituted for the measures prescribed in subsection (D) above.
4. Impounding vehicles. The Chief of Police or his designee may impound any truck, trailer, semi-trailer, delivery car, service, or other commercial vehicle parked in violation of this ordinance and may retain possession of the same until all fines and fees have been paid and

until any sentence or order of the court has been completed and/or obeyed.

SOURCE: Ord. 752, Sec. 1 (2005)

13-1605. LOADING AND UNLOADING REGULATIONS FOR TRUCKS. A vehicle may be allowed to double-park for the purpose of loading or discharging passengers, or for unloading freight when there is no alley for such purpose and no other parking space available and the freight to be unloaded is of heavy or bulky nature, but only for such length of time as is absolutely necessary for such loading and unloading, except that no merchandise or freight pick-ups or deliveries whatsoever shall be made from doubleparked vehicles between the hours of 4:00 p.m. and 6:00 p.m. on any day except on Sundays and legal holidays and no vehicle shall double-park for such purposes between such hours.

Any person owning, driving, operating or having under his control any vehicle shall not permit the same to stand or be parked in any alley except while loading or unloading freight or merchandise. If any vehicle is left parked or standing in any alley during such loading or unloading operations it shall be located so that it does not block the alley and as close to the edge of the alley as possible.

If the alley is so narrow that it will be blocked even though the vehicle engaged in the loading or unloading operation is parked so close to the edge of the alley as possible, then, in that event such vehicle shall not be left unattended at any time.

It shall be unlawful to load or unload automobile transport trailers on any residential street, boulevard or public property of the City of West Fargo.

It shall be unlawful to park or permit any vehicle to stand so that it is backed against the curb except when actually loading or unloading freight or merchandise, and if the vehicle is a semi-trailer combination, the motor vehicle or tractor unit thereof must stand parallel to the curb and be headed in the direction of the traffic. No vehicle shall stand so backed up that it interferes with or interrupts the passage of traffic.

It shall be unlawful for any person, firm or corporation to drive or permit to be driven any semi-trailer or truck of more than one ton capacity by backing the same into a curb, unless such person, firm or corporation shall provide a person or arrange with some person, in addition to the driver, to act as flagman during all operations, and said flagman shall station himself in such a position so that he can warn both pedestrians and moving traffic and so that the driver can back the vehicle in a safe manner. It shall be lawful for a police officer to act as such flagman if it does not interfere with his duties as a police officer.

SOURCE: Ord. 752, Sec. 2 (2005)

13-1606. PARKING LIMITS. The owner, driver or any other person having under his control or charge any vehicle of any kind whatsoever, shall not cause, permit or allow such vehicle to stand or remain in any one place for a longer period than seventy-two (72) hours upon any street or alley in the City of West Fargo. The Public Works Director shall place signs on all street entrances to the City to notify the public of this restriction.

SOURCE: Ord. 752, Sec. 3 (2005)

13-1607. CHIEF OF POLICE MAY DESIGNATE TEN MINUTE PARKING AREAS. The Chief of Police may designate ten minute parking areas in the business or residential district of the City, and may also extend, change or adjust any of the present ten minute zone now in existence, all subject to the approval of the Board of City Commissioners. Further, the Chief of Police may extend the time when said ten minute zones shall be in effect to cover any period from 8:00 a.m. to 12:00 midnight. He may make these changes if in his opinion traffic conditions require such specified enforcement periods. Each ten minute period during which any vehicle is parked in such area shall constitute a separate and additional violation provided such areas shall be properly posted or marked.

13-1608. PARKING OF RECREATIONAL VEHICLES, RECREATIONAL EQUIPMENT AND RECREATIONAL TRAILERS. No recreational vehicle, recreational equipment or recreational trailer may be parked upon any street, boulevard or alley within a residentially zoned district for a period exceeding seventy-two (72) hours.

SOURCE: Ord. 752, Sec. 4 (2005)

13-1609. PARKING IN AREA DESIGNATED FOR MOBILITY IMPAIRED WITHOUT CERTIFICATE. No person may stop, stand, or park any vehicle in any designated parking space that is reserved for the mobility impaired unless the vehicle displays a mobility impaired identification certificate or license plate issued by the State to a mobility impaired person. Provided, a vehicle may temporarily use a space reserved for mobility impaired persons without a mobility impaired certificate or license plate for the purpose of loading and unloading mobility impaired persons. Violation of this section is an infraction for which a fine up to the limit set by the State may be imposed by the City.

Source: Ord. 735, Sec. 2 (2005)

13-1610. MOTOR VEHICLE LEFT UNATTENDED, BRAKES TO BE SET. No person having control or charge of a motor vehicle shall allow such vehicle to stand on any street or alley unattended without first effectively setting the brakes thereon, and, when standing upon any grade, shall turn the front wheels of such vehicle to the curb or side of the street or highway.

13-1611. UNLAWFUL TO PARK ON PRIVATE PROPERTY. It shall be unlawful to trespass upon by driving or parking a motor vehicle or

trailer or vehicle of any kind upon private property within the city limits of the City of West Fargo, where there is displayed upon said property a sign containing the words "Private Property" or "Private Parking," without first obtaining permission in writing from the owner or lessee thereof.

13-1612. RESTRICTED PARKING IN RECREATION AREAS. Vehicles shall not be parked upon any public street or alley within any playground, swimming pool, tennis courts or any recreation areas, when said street, alley or area is designated or posted against parking.

13-1613. PARKING NOT TO OBSTRUCT TRAFFIC. No person shall park any vehicle upon a street, other than an alley in such manner or under such conditions as to leave available less than 15 feet of the width of the roadway for free movement of vehicular traffic.

13-1614. PARKING FOR CERTAIN PURPOSES PROHIBITED. No person shall park a vehicle upon a roadway for the principal purpose of:

1. Displaying such vehicle for sale;
2. Washing, greasing or repairing such vehicle except repairs necessitated by an emergency.

13-1615. NO STOPPING, STANDING OR PARKING NEAR HAZARDOUS OR CONGESTED PLACES. The Chief of Police is hereby authorized to determine and designate, by having signs placed, places not exceeding one hundred feet in length in which the stopping, standing or parking would create an especially hazardous condition or would cause unusual delay to traffic.

When official signs are erected at hazardous or congested places as authorized herein no person shall stop, stand, or park a vehicle in any such designated place.

The Chief of Police is hereby authorized to determine the location of passenger and freight loading zones and shall place and maintain appropriate signs indicating the same.

No person shall stop, stand or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone and then only for a period long enough to complete such loading.

No persons shall stop, stand or park a vehicle for any purpose or length of time other than for expeditious loading and delivery or pick-up and loading of materials in any place marked as a freight curb loading zone. In no case shall the stop for unloading and loading of materials be longer than that needed to complete such loading and unloading.

13-1616. STOPPING, STANDING AND PARKING OF BUSES AND TAXI CABS REGULATED. The operator of a bus shall not stand or park such vehicle upon any street at any place other than a bus stand so designated as provided herein. The operator of a bus shall not stop such vehicle upon any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop, bus stand or passenger loading zone so designated as provided herein, except in case of an emergency.

The operator of a bus shall enter a bus stop, bus stand or passenger loading zone on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not further than 18 inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

The operator of a taxi cab shall not stand or park such vehicle upon any street at any place other than in a taxi cab stand so designated as provided herein. This provision shall not prevent the operator of a taxi cab from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers.

13-1617. RESTRICTED USE OF BUS AND TAXI CAB STANDS. No person shall stop, stand or park a vehicle other than a bus in a bus stop or other than a taxi cab in a taxi cab stand when any such stop or stand has been officially designated and appropriately assigned except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus.

13-1618. RESERVED FOR FUTURE USE.

13-1619. PARKING PROHIBITED DURING CERTAIN HOURS ON CERTAIN STREETS. When signs are erected in each block giving notice thereof, no person shall park a vehicle between the hours specified on the sign, on any day except Sundays, and public holidays upon any of the streets so posted.

13-1620. PARKING PROHIBITED ON SIDEWALKS OR BOULEVARDS. No person shall stop, stand or park any automobile, truck or other vehicle, whether attended or unattended, on a sidewalk or on any boulevard or berm between the sidewalk and the roadway in the City of West Fargo.

13-1621. PARKING SIGNS REQUIRED. Whenever by this title, or any ordinance of this City any parking time limit is imposed or parking is prohibited on designated streets it shall be the duty of the City to erect appropriate signs giving notice thereof and no

such regulations shall be effective unless such signs are erected and in place at the time of any alleged offense subject to specific exceptions as stated in this title.

13-1622. APPLICATION OF CHAPTER. The provisions of this Chapter prohibiting the standing or parking of a vehicle shall apply at all time or at those times herein specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer of official traffic-control device.

13-1623. PARKING PRIVILEGES FOR MOBILITY IMPAIRED - CERTIFICATE - REVOCATION.

1. Any mobility-impaired person who displays prominently upon an automobile parked by that person or under that person's direction and for that person's use, the distinguishing certificate specified in subsection 4 or license plates issued under section 39-04-10.2 is entitled to courtesy in the parking of the automobile. Provided, however, that any municipality may, by ordinance, prohibit parking on any street or highway for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extended to such impaired persons do not apply on streets or highways where and during such times as parking is prohibited.
2. A mobility-impaired person as used in this section includes any person who uses portable oxygen; requires personal assistance or the use of crutches, a wheelchair, or a walker to walk two hundred feet [60.96 meters] without rest; is restricted by cardiac, pulmonary, or vascular disease from walking two hundred feet [60.96 meters] without rest; has a forced expiratory volume of less than one liter for one second or an arterial oxygen tension of less than sixty millimeters of mercury on room air while at rest and is classified III or IV by standards for cardiac disease set by the American heart association; or has an orthopedic, neurologic, or other medical condition that makes it impossible for the person to walk two hundred feet [60.96 meters] without assistance or rest.
3. Repealed by S.L. 1989, ch. 319, § 6.
4. The director may issue, for a fee of three dollars per year or part of a year, a special identifying certificate to any mobility-impaired applicant upon submission by the applicant of a completed application and a written or electronic statement issued by a qualified physician, physician assistant, chiropractor, or an advanced

practice registered nurse to the director that the applicant is a mobility-impaired person within the criteria of subsection 2. The director shall waive the requirement for a written or electronic statement from a qualified physician, physician assistant, chiropractor, or an advanced practice registered nurse if the applicant has previously submitted an application containing a certification from a qualified physician, physician assistant, chiropractor, or an advanced practice registered nurse that the applicant's impairment is not reversible. The application must include the information required by the director. The physician's, physician assistant's, chiropractor's, or advanced practice registered nurse's statement must describe how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate is valid for a period, not to exceed three years, as determined by the director. A physician, physician assistant, chiropractor, or an advanced practice registered nurse who provides a false statement that a person is mobility impaired for the purpose of that person obtaining a certificate under this subsection is guilty of an infraction for which a minimum fine of one hundred dollars must be imposed. A certificate issued under this subsection must be nine and one-half inches [24.13 centimeters] in height and three inches [7.62 centimeters] in width and must bear, in white on blue, the internationally accepted symbol of access for the mobility impaired. The certificate must bear the expiration date and registration number assigned by the director. The director shall adopt rules governing the issuance of the certificate. A temporary certificate, valid for an initial period not to exceed three months, may be issued by the director for a fee of three dollars upon application supported by a physician's, physician assistant's, chiropractor's, or an advanced practice registered nurse's statement. The director may issue a maximum of one additional temporary certificate, for a fee of three dollars. The temporary certificate may be extended an additional period, not to exceed three months, upon application supported by a physician's, physician assistant's, chiropractor's, or an advanced practice registered nurse's statement that the extension is warranted. Temporary certificates must be the same size as other certificates issued under this section and must be white on red. The director may issue a maximum of one additional certificate, if the applicant does not have license plates issued under section 39-04-10.2, for a fee of six dollars per certificate, to a mobility-impaired person to whom a certificate has been issued under this subsection. The additional certificates may only be used by or on behalf of the mobility-impaired person.

Source: Ord. 1041, Sec. 10 (2015)

5. Except as provided in this subsection, two dollars of each fee for issuance of a certificate and one dollar of each fee for issuance of an additional certificate under this section must be deposited in the state highway department fund for purposes of defraying the cost of issuing the certificate. The rest of the fee, and the five dollar fee received for the issuance of an additional certificate under subsection 4, must be deposited in the state treasury and credited to the employment of people with disabilities fund. The fees deposited in the fund are hereby appropriated on a continuing basis to the committee on employment of people with disabilities of the department of human services for development of job opportunities for disabled individuals in this state. If a certificate is lost, mutilated, or destroyed, the person to whom the certificate was issued is entitled to a replacement. The person shall furnish proof satisfactory to the director that the certificate has been lost, mutilated, or destroyed, and shall pay a replacement fee of three dollars.
6. A certificate issued under this section must be hung from the rearview mirror of the motor vehicle whenever the vehicle is occupying a space reserved for the mobility impaired and is being used by a mobility-impaired person or another person for the purposes of transporting the mobility-impaired person. No part of the certificate may be obscured. A fee of five dollars may be imposed for a violation of this subsection.
7. An applicant may appeal a decision denying issuance of the certificate to the director. Written notice of the appeal must be received within ten business days following receipt by the applicant of notice of denial. The applicant has sixty days to provide additional supportive material to the director for purposes of deciding the appeal. The director shall affirm or reverse the decision to deny issuance of the certificate within thirty days after receipt of the supportive material. Written notice of the decision must be given to the applicant.
8. If a law enforcement officer finds that the certificate is being improperly used, the officer may report to the director any such violation and the director may, in the director's discretion, remove the privilege. Any person who is not mobility impaired and who exercises the privileges granted a mobility-impaired person under subsection 1 is guilty of an infraction for which a fine of one hundred dollars must be imposed.

9. Whenever any public or private entity designates parking spaces for use by motor vehicles operated by mobility-impaired persons, those reserved spaces must comply with the requirements of the Americans with Disabilities Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36] and must be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, each reserved space must be indicated by an official sign approved by the director bearing the internationally accepted symbol of access for the mobility impaired. The sign must indicate that unauthorized use of the space is a nonmoving violation for which a fee of one hundred dollars must be imposed. For particular events, a public or a private entity may reserve additional parking spaces for use by motor vehicles operated by mobility-impaired persons. In that case, each temporarily reserved space must be indicated by a sign or other suitable means. A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the space is a temporary mobility-impaired parking space, is sufficient basis for the enforcement of this section. A law enforcement officer shall enforce this section in any parking lot or parking facility, whether publicly or privately owned.
10. A person may not stop, stand, or park any vehicle in any designated parking space that is reserved for the mobility impaired unless the vehicle displays a mobility-impaired identification certificate issued by the director to a mobility-impaired person. A mobility-impaired person may not permit the use of a certificate issued under this section by a person who is not mobility impaired when that use is not in connection with the transport of the mobility-impaired person. The registered owner of a vehicle may not allow that vehicle to be used in a manner that violates this subsection. Proof of intent is not required to prove a registered owner's violation of this subsection. The registered owner, however, may be excused from a violation if the owner provides the citing authority with the name and address of the person operating the vehicle at the time of the violation. A vehicle may temporarily use a space reserved for mobility-impaired persons without a mobility-impaired certificate for the purpose of loading and unloading mobility-impaired persons. A violation of this subsection is a nonmoving violation for which a fee of one hundred dollars must be imposed. Notwithstanding section 29-27-02.1, fifty percent of the fee imposed and collected under this subsection is appropriated on a

continuing basis to the local committee on persons with disabilities, if one exists in the city in which the violation occurred, for the development of job opportunities for disabled individuals in the community.

11. Any motor vehicle licensed in another state which displays a special authorized vehicle designation issued by the licensing authority of that state for vehicles used in the transportation of mobility-impaired persons must be accorded the same privilege provided in this section for similar vehicles licensed in this state if the laws of the other state provide the same privileges to North Dakota motor vehicles displaying the special identifying certificate authorized in this section.

(Source: North Dakota Cent. Code § 39-01-15)

13-1624. REGULATIONS NOT EXCLUSIVE. The provisions of this Chapter imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times.

13-1625. PENALTY. Violations of the provisions of this chapter shall be a fine of Eight Dollars (\$8), unless a specific section provides for another penalty. If the parking violation is not paid within ten (10) days of the issuance of the ticket, the penalty shall be Ten Dollars (\$10).

Source: Ord. 943, Sec. 1 (2013)

13-1626. DELINQUENT TICKETS -- IMPOUNDMENT OF VEHICLE. Any vehicle found unoccupied on any public way, public property or property to which the general public has a right of access, and against the registered owner of which vehicle there are three (3) or more unsettled traffic violation notices, warrants for such violations, or parking tickets, is subject to the following procedure:

1. Notice of Pending Impoundment. The West Fargo Chief of Police, or his designated agent, shall mail written notice to the last known address of the registered owner of the vehicle (as determined by the address on file with the Registrar of Motor Vehicles of the State of North Dakota, or other similarly situated person for vehicles licensed in a state other than North Dakota) of the fact that there are three (3) or more unsettled traffic violation notices, warrants for such violations, or parking tickets outstanding, and of the pending impoundment of the vehicle. Additionally, this written notice must include a description of the right of the registered owner to request a hearing on the propriety of the impoundment, as set forth in subsection 3 below. Notice is hereby deemed effective and complete by being placed in the mail.

2. Impoundment. After five (5) days from mailing the notice of pending impoundment, and unless the owner of the vehicle has complied with subsection 3(A) herein, the vehicle may be towed and impounded. Unless the Clerk of Court, or if the Clerk is unavailable the City Auditor, determines the impoundment to be unwarranted, as provided in subsection 3(B) herein, all impoundment and storage fees and costs shall be paid prior to the release of the vehicle. Within twenty-four (24) hours after the vehicle is impounded, the Chief of Police, or a person designated by the Chief of Police, shall mail written notice to the last known address of the registered owner of the vehicle (as determined by the address on file with the Registrar of Motor Vehicles of the State of North Dakota, or other similarly situated person for vehicles licensed in a state other than North Dakota) of the fact that the vehicle has been impounded, the reasons why the vehicle has been impounded, the method for releasing the vehicle, and where and when the person may obtain a hearing to contest the propriety of the impoundment of the vehicle. Notice is hereby deemed effective and complete by being placed in the mail.
3. Hearing to Determine Propriety of Impoundment.
 - a. Prior to Impoundment. Any person receiving a notice pursuant to subsection 1 of this section may request a hearing on the propriety of the pending impoundment of his vehicle within five (5) days from the date of the mailing of the notice. The scope of such a hearing shall be limited to whether or not the owner of the vehicle has the minimum number of unsettled traffic violation notices, warrants for such violations, or parking tickets as set forth herein. The hearing shall not be determinative of, nor adjudicate, any citations issued to the vehicle or its owner. The hearing shall be conducted by the Clerk of the Municipal Court of West Fargo, North Dakota, or if the Clerk is unavailable, by the City Auditor for the City of West Fargo, North Dakota.
 - b. Subsequent to Impoundment. Any person whose vehicle has been impounded may request a hearing on the propriety of the impoundment of the vehicle. The hearing shall not be determinative of, nor adjudicate, any citations issued to the vehicle or its owner. The hearing must be requested within fifteen (15) days after the vehicle is impounded. The hearing shall be conducted by the Clerk of Municipal Court of West Fargo, North Dakota, or if

the Clerk is unavailable, by the City Auditor for the City of West Fargo, North Dakota.

4. Release of Impounded Vehicle. A vehicle impounded pursuant to this section shall be released to the registered owner, or any other authorized person, only upon the occurrence of one of the following circumstances:
 - a. The Clerk of Municipal Court of West Fargo, North Dakota, or, if the Clerk is unavailable, the City Auditor of the City of West Fargo, North Dakota, determines, in a hearing pursuant to subsection 3 above, that the impoundment is not warranted; or
 - b. The registered owner of the vehicle, or other authorized person, pays all outstanding fines, fees, penalties, costs and surcharges for all outstanding or otherwise unsettled traffic violations and parking tickets, and either pays or posts bond pending a hearing as described in subsection 3 above, all fees and costs relating to the impoundment of the vehicle, as set forth in the schedule contained below; or
 - c. The registered owner of the vehicle, or other authorized person, posts bond or deposits collateral to ensure appearance in Municipal Court to answer for each violation, and either pays or posts bond pending a hearing as described in subsection 3 above, all fees and costs relating to the impoundment of the vehicle as set forth in the schedule contained below.
5. Schedule of Fees. The following fees shall be applicable for purposes of this section:
 - a. Impoundment Fees. The fee for the impoundment of a vehicle shall be an additional Twenty-five and no/100 Dollars (\$25.00).
 - b. The owner, or any other authorized person of a vehicle shall be responsible for all costs of towing and/or storage of a vehicle.

CHAPTER 13-17

RAILROAD CARS AND CROSSINGS

SECTIONS:

- 13-1701. Crossing Intersections of Railroads.
- 13-1702. Obedience to Signal Indicating Approach of Train.
- 13-1703. All Vehicles Must Stop at Certain Railroad Grade Crossings.
- 13-1704. Certain Vehicles Must Stop at All Railroad Grade Crossings.

13-1701. CROSSING INTERSECTIONS OF RAILROADS. In crossing an intersection of a street or the intersection of a street by a railroad right-of-way the driver of a vehicle shall at all times cause such vehicle to travel on the right half of the street unless such right half is obstructed or impassable or unless there are two lanes of traffic going in the same direction.

13-1702. OBEDIENCE TO SIGNAL INDICATING APPROACH OF TRAIN.

1. Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirement shall apply when:
 - a. A clearly visible electric or mechanical device gives warning of the immediate approach of a railroad train;
 - b. A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;
 - c. A railroad train within approximately 1,320 feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; or
 - d. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.
2. No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. No person shall drive any vehicle past any

human flagman at a railroad crossing until the flagman signals that the way is clear to proceed.

13-1703. ALL VEHICLES MUST STOP AT CERTAIN RAILROAD GRADE CROSSINGS. The Police Department of the City of West Fargo, with respect to highways under its jurisdiction, is hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected, the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

13-1704. CERTAIN VEHICLES MUST STOP AT ALL RAILROAD GRADE CROSSINGS.

1. The driver of a bus carrying passengers, or of any school bus carrying any school child, or of any vehicle carrying any chlorine, empty or loaded cargo tank vehicles used to transport dangerous articles or any liquid having a flash point below 200 degrees F., cargo tank vehicles transporting a commodity having a temperature above its flash point at the time of loading, certain cargo tank vehicles transporting commodities under special permits issued by the hazardous materials regulations board, and every motor vehicle which must have the following placards: "Explosives," "Poison," "Flammable Oxidizers," "Compressed Gas," "Corrosives," "Flammable Gas," "Radioactive," or "Dangerous," before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing such crossing, and the driver shall not manually shift gears while crossing the track or tracks.
2. No stop need be made at any such crossing at which traffic is controlled by a police officer. For the purposes of this Section, a United States marshal shall be considered a police officer.

CHAPTER 13-18

BICYCLES

SECTIONS:

- 13-1801. Effective Regulations.
- 13-1802. License Application.
- 13-1803. Issuance of License.
- 13-1804. Attachment of License Plate.
- 13-1805. Inspection of Bicycles.
- 13-1806. Renewal of License.
- 13-1807. Transfer of Ownership.
- 13-1808. Rental Agencies.
- 13-1809. Bicycle Dealers.
- 13-1810. Traffic Laws Apply to Persons Riding Bicycle or Tricycle.
- 13-1811. Traffic - Control Devices: Obedience to.
- 13-1812. Riding on Bicycles.
- 13-1813. Riding on Roadways and Bicycle Paths.
- 13-1814. Speed.
- 13-1815. Emerging from Alley or Driveway.
- 13-1816. Carrying Articles.
- 13-1817. Parking.
- 13-1818. Riding on Sidewalks.
- 13-1819. Lamps and Other Equipment on Bicycles.
- 13-1820. Bicycles May be Impounded if Operated in Violation of Ordinances: Impound Fee.
- 13-1821. Bicycle Accidents.
- 13-1822. Peace Officer Operating Bicycle.

13-1801. EFFECTIVE REGULATIONS.

1. It is an infraction for any person to do any act forbidden or fail to perform any act required in this title.
2. The parent of any child and the guardian of any ward shall not authorize or knowingly permit any child or ward to violate any provisions of this title.
3. These regulations are applicable to bicycles and tricycles shall apply whenever a bicycle or tricycle is operated upon any street or highway or upon any path set aside for the exclusive use of bicycles or tricycles subject to those exceptions stated herein.

Source: Ord. 735, Sec. 3 (2005)

13-1802. LICENSE APPLICATION. Application for bicycle license and license plate shall be made upon a form provided by the City and shall be made to the Police Department. A license fee of one dollar (\$1.00) shall be paid to the City before each license or renewal thereof is granted.

13-1803. ISSUANCE OF LICENSE.

1. The Chief of Police, or his delegated agent, upon receiving proper application therefor is authorized to issue a bicycle license which shall be a permanent license. A renewal of the license is only required if the license plate is lost or becomes illegible. A registration card shall be issued with each license.
2. The Chief of Police, or his delegated agent, shall not issue a license for any bicycle when he knows or has reasonable ground to believe that the applicant is not the owner of or entitled to the possession of such bicycle.
3. The Chief of Police, or his delegated agent, shall keep a record of the number of each license, the date issued, the name and address of the person to whom issued, and the number of the frame of the bicycle for which issued, and a record of all bicycle license fees collected.

13-1804. ATTACHMENT OF LICENSE PLATE.

1. The Chief of Police, or his delegated agent, upon issuing a bicycle license shall also issue a license plate bearing the license number assigned to the bicycle, the name of the city, and the date of issuance;
2. The Chief of Police, or his delegated agent, shall cause such license plate to be firmly attached to the frame of the bicycle for which issued in such position as to be plainly visible; and
3. No person shall remove the license plate from a bicycle during the period for which issued except in the event the bicycle is dismantled and no longer operated upon any street in the city.

13-1805. INSPECTION OF BICYCLES. The chief of police, or his delegated agent, may inspect each bicycle before licensing the same and shall refuse a license for any bicycle which he determines is in an unsafe mechanical condition.

13-1806. RENEWAL OF LICENSE. If the license plate is lost or becomes illegible, the license may be renewed upon application and payment of the same fee as upon an application.

13-1807. TRANSFER OF OWNERSHIP. Upon the sale or other transfer of a licensed bicycle, it shall be the responsibility of the purchaser to make proper application to the police department for change in the ownership registration. Said change in record to be made without payment of any additional fee. In all cases, the

license plate shall remain with the bicycle to which it was originally assigned.

13-1808. RENTAL AGENCIES. A rental agency shall not rent or offer any bicycle for rent unless the bicycle is licensed and a license plate is attached thereto as provided therein. Such bicycle is equipped with the lamps and other equipment required in this chapter.

13-1809. BICYCLE DEALERS. Every person engaged in the business of buying or selling new or second-hand bicycles shall make a report to the police department of every bicycle purchased or sold by such dealer, giving the name and address of the person from whom purchased or to whom sold, a description of such bicycle by name or make, the frame number thereof, and the number of the license plate, if any, found thereon.

13-1810. TRAFFIC LAWS APPLY TO PERSONS RIDING BICYCLE OR TRICYCLE. Every person riding a bicycle or tricycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this state, declaring rules of the road applicable to vehicle or by the traffic ordinances of this city applicable to the driver of a vehicle, except as to special regulations in this chapter and exempt as to those provisions of laws and ordinances which by their nature have no application.

13-1811. TRAFFIC - CONTROL DEVICES: OBEDIENCE TO.

1. Any person operating a bicycle or tricycle shall obey the instructions of the official traffic-control signals, signs and other control devices applicable to vehicles, unless otherwise directed by a police officer;
2. Whenever authorized signs are erected indicating that no right or left or "U" turn is permitted, no person operating a bicycle or tricycle shall disobey the direction of any sign, except where such person dismounts from the bicycle or tricycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians.

13-1812. RIDING ON BICYCLES.

1. A person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto;
2. No bicycle shall be used to carry more persons at one time than the number which it is designed or equipped.

13-1813. RIDING ON ROADWAYS AND BICYCLE PATHS.

1. Every person operating a bicycle or tricycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction;
2. Persons riding bicycles or tricycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles or tricycles;
3. Wherever a usable path for bicycles or tricycles has been provided adjacent to a roadway, bicycle or tricycle riders shall use such path and shall not use the roadway.

13-1814. SPEED. No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing.

13-1815. EMERGING FROM ALLEY OR DRIVEWAY. The operator of a bicycle emerging from an alley, driveway or building, upon approaching a sidewalk or the pedestrians approaching on said sidewalk or sidewalk area, and upon entering the roadway, shall yield right-of-way to all vehicles approaching on said roadway.

13-1816. CARRYING ARTICLES. No person operating a bicycle shall carry a package, bundle or article which prevents the rider from keeping at least one hand upon the handlebars, or carry any package, bundle or article which prevents the forward vision of the operator.

13-1817. PARKING. No person shall park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such manner as to afford the least obstruction to pedestrian traffic.

13-1818. RIDING ON SIDEWALKS.

1. No person shall ride a bicycle upon a sidewalk within a business district;
2. No person 12 or more years of age shall ride any bicycle upon any sidewalk in any district, except those persons engaged in delivering newspapers and except those persons who are riding with a child under 12 years of age for the purpose of supervision and guidance may ride their bicycle upon a sidewalk outside the business district during working hours only in order to complete delivery of their newspapers;

3. No person shall ride a bicycle upon a sidewalk which is within or part of an underpass;
4. Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing such pedestrian.

13-1819. LAMPS AND OTHER EQUIPMENT ON BICYCLES.

1. Every bicycle when in use at night time shall be equipped with a lamp on the front of which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type approved by the Motor Vehicle Department. A lamp emitting red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.
2. Every bicycle shall be equipped with a brake which will enable the operator make the braked wheel skid on dry, level and clean pavement.

13-1820. BICYCLES MAY BE IMPOUNDED IF OPERATED IN VIOLATION OF ORDINANCES: IMPOUND FEE. The Police Department of the City of West Fargo or any of the members thereof, may impound and retain possession of any bicycle not licensed or otherwise operated in violation of any of the ordinances of the City of West Fargo and retain possession of the same until the license provided for herein is obtained by the owner of the said bicycle and until all impound fees and fines have been paid.

An impound fee of twenty-five cents per week is hereby established.

13-1821. BICYCLE ACCIDENTS. A driver of a bicycle involved in an accident with another bicycle, motor vehicle or with a pedestrian shall immediately stop such bicycle, motor vehicle or with a pedestrian shall immediately stop such bicycle at the scene of the accident and shall give his name, age and address to other person or persons involved. He shall also give immediate notice of the accident to the police department and shall file a report with the police department regarding the accident. In the event said accident is investigated at the scene by the police, then it is not necessary for the driver to file an individual report.

13-1822. PEACE OFFICER OPERATING BICYCLE. The provisions of this section governing the operation of bicycles do not apply to bicycles operated by peace officers while performing their duties.

CHAPTER 13-19
TRANSPORTATION BY MOTOR VEHICLES OF EXPLOSIVES WITHIN CITY

SECTIONS:

- 13-1901. Application.
- 13-1902. Declared a Hazard.
- 13-1903. Permit Required
- 13-1904. Conditions of Permit.
- 13-1905. Type of Escorts Permitted.
- 13-1906. Charge for Escort Vehicles or Drivers.

13-1901. APPLICATION. This chapter shall apply to all owners and operators of motor vehicles transporting any explosives, munitions, dynamite, ammunition (except small arms ammunition and shot-gun shells), gunpowder, TNT, dynamite caps or detonating caps in the City of West Fargo.

13-1902. DECLARED A HAZARD. The transportation by motor vehicle in the City of West Fargo of any of the commodities or things mentioned in Section 13-1901 of this chapter, is hereby declared to be a menace and a hazard to the safety of the people of the City of West Fargo and their property.

13-1903. PERMIT REQUIRED. It shall be unlawful for any person, partnership, association or corporation who owns, leases or operates any motor vehicle hauling any of the commodities or things mentioned in Section 13-1901 of this chapter to use or operate the same for the transportation of such commodities or things upon the streets of the City of West Fargo without first having obtained a permit to do so from the City Auditor of the City of West Fargo. A violation of any of the conditions or provisions of the permit shall be a violation of this chapter.

13-1904. CONDITIONS OF PERMIT. A permit shall be required for each vehicle but not for each separate movement through the City and all permits issued shall contain the following conditions and provisions:

1. The route through the City of West Fargo which will be followed;
2. The time of the movement of hauling and the type of escort to be provided;
3. The name of the driver of the vehicle, a description of the vehicle, and the name of the owner or lessor of the vehicle.

13-1905. TYPE OF ESCORTS PERMITTED. Each and every motor vehicle transporting any of the things or commodities mentioned in Section 13-1901 of this chapter on the streets of the City of West Fargo must, after obtaining a permit as above required be escorted and protected both front and rear by an official highway department, sheriff's, police or fire department vehicle driven by:

1. A North Dakota State Highway Patrolman; or
2. A police officer of the City of West Fargo, North Dakota; or
3. A police officer of the City of Fargo, North Dakota; or
4. A fireman from the City of West Fargo, North Dakota; or
5. A sheriff or authorized deputy from Cass County, North Dakota.

13-1906. CHARGE FOR ESCORT VEHICLES OR DRIVERS. If West Fargo Police Department or Fire Department vehicles or drivers are to be used as escorts, a fee of \$5.00 for each vehicle, or each escort driver, or each vehicle and escort driver furnished shall first be paid, provided that in no case shall any one truck, or semi-trailer be required to pay more than a total of \$10.00 per trip through the City for escort vehicles and escort drivers.

CHAPTER 13-20

SNOWMOBILES, ALL-TERRAIN VEHICLES AND OFF-ROAD MOTORCYCLES

(Source: Ord. 735, Sec. 1 (2005))

SECTIONS:

- 13-2001. Definitions.
- 13-2002. Severability.
- 13-2003. Prohibited Operation.
- 13-2004. Reckless or Careless Operation.
- 13-2005. Operation Prohibited by Persons Under the Influence of Intoxicating Liquor or Narcotic Drugs.
- 13-2006. Operation of Motorized Scooters.
- 13-2007. Operation of Toy Vehicles.
- 13-2008. Exemption from Certain Requirements.
- 13-2009. Responsibility of Parent, Guardian or Person Having Custody of a Minor.

13-2001. DEFINITIONS.

- 1. Snowmobile. For purposes of this Chapter "snowmobile" shall mean a self-propelled vehicle designed for travel on snow or ice or natural terrains steered by wheels, skis or runners.
- 2. All-Terrain Vehicle. For purposes of this Chapter "all-terrain vehicle" shall mean any motorized off-highway vehicle 50 inches or less in width, having a dry weight of 1,000 pounds or less, traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.
- 3. Off-Road Motorcycle. For purposes of this Chapter, "off-road motorcycle" shall mean every motor vehicle having a seat or saddle for the use of rider and designed to travel on not more than three wheels in contact with the ground, and which does not meet State requirements for on-road motor vehicles, but is designed for primary use upon undeveloped land or trails. It does not include motorized scooters or toy vehicles.
- 4. Motorized Scooter. For purposes of this chapter, "motorized scooter" shall mean a self propelled vehicle with at least two wheels on the ground during operation having a braking system capable of stopping the vehicle under typical operating conditions with a gas or electric motor less than or equal to 40 cc and capable of

propelling the vehicle to a speed no greater than 20 mph. It shall also have a seat or deck designed to allow a person to sit or stand.

5. Toy Vehicle. For purposes of this chapter, "toy vehicle" shall mean a vehicle which is self propelled, or capable of being propelled by human power, manufactured for use by a child and capable of speeds no greater than 10 mph.

13-2002. SEVERABILITY. Invalidity of any section clause, sentence or any provision of this chapter shall not affect the validity of any part of this ordinance which can be given effect without such invalid part or parts.

13-2003. PROHIBITED OPERATION. It shall be unlawful for any person to drive or operate any snowmobile, all-terrain vehicle, or off-road motorcycle within the city limits of the City of West Fargo, North Dakota, except under the following circumstances:

1. When loading or unloading such vehicle onto another vehicle or transporting the vehicle from one place of storage to another. When loading, unloading or transporting any such vehicle as authorized by this subsection, the motor shall be operated at the lowest rate which will allow movement of the vehicle at walking speed; or
2. When such vehicle is being used as a utility vehicle for purposes which include but are not limited to the maintenance of lawns and gardens, snow removal, agriculture, participating in a sanctioned parade, or inspection of public works in remote areas; or
3. When such vehicles are used by law enforcement officers for law enforcement purposes; or
4. In case of an emergency.
5. In an area south of Interstate 94 which is zoned agricultural, as long as the vehicle is not on a street right of way, other than a road ditch.

13-2004. RECKLESS OR CARELESS OPERATION. It is unlawful for any person to drive or operate any snowmobile, all-terrain vehicle, off-road motorcycle, or motorized scooter in the following ways which are declared to be unsafe and a public nuisance:

1. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to such person or property.

13-2005. OPERATION PROHIBITED BY PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR NARCOTIC DRUGS. It is unlawful for any person to drive or operate any snowmobile, all-terrain vehicle, off-road motorcycle or motorized scooter in the following ways which are declared to be unsafe and a public nuisance:

1. While under the influence of intoxicating liquor or drug as defined in Section 39-24.1-01 of the North Dakota Century Code, or a combination thereof.

13-2006. OPERATION OF MOTORIZED SCOOTERS. A person may operate a motorized scooter within the City limits of West Fargo, subject to the following conditions.

- A. A motorized scooter may not be operated upon any sidewalk, bikepath, pedestrian walkway or pedestrian trail.
- B. No person shall operate a motorized scooter upon a roadway on which the posted speed limit is greater than 30 mph, a four lane roadway or upon any road that is designated as a snow emergency route.

A motorized scooter may cross a roadway prohibited above, but may do so only at a perpendicular angle, and only after coming to a full and complete stop.

- C. A motorized scooter operated upon any street must be equipped with reflectors and shall have a florescent orange flag, measuring a minimum of 100 square inches mounted 3 feet above the highest point of the scooter.
- D. No motorized scooter may be operated prior to sunrise or after sunset.
- E. No motorized scooter may be operated unless equipped with factory supplied stock exhaust muffler, exhaust systems and braking systems.
- F. An operator under the age of 18 years of age must wear a protective helmet.
- G. No passengers are allowed on a motorized scooter, unless the scooter is specifically designed to carry passengers.
- H. Every person riding a motorized scooter upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this state, declaring rules of the road applicable to a vehicle or by the traffic ordinances of this city applicable to the driver of a motorized scooter, except as to special regulations in this chapter

and exempt as to those provisions of laws and ordinances which by their nature have no application.

A person who has a mobility impairment certificate issued by a licensed physician shall be exempt from subsections A. and B. above. If a person is operating a motor scooter on a sidewalk, bikepath, or pedestrian path or trail as a result of this exception, they must yield right of way to pedestrians in all situations.

13-2007. OPERATION OF TOY VEHICLES. No person shall operate a toy vehicle upon a roadway or other area open to the public for motor vehicle traffic, or anywhere within the City limits before sunrise or after sunset.

13-2008. EXEMPTION FROM CERTAIN REQUIREMENTS. Notwithstanding other provisions of the West Fargo Ordinances, operators of motor scooters and toy vehicles shall be exempt from the requirements for possessing an operator's license, liability insurance, registration, and license plates as set by ordinance for other vehicles.

13-2009. RESPONSIBILITY OF PARENT, GUARDIAN OR PERSON HAVING CUSTODY OF A MINOR. No parent, guardian or person having actual custody of a person under 18 years of age shall allow a person under 18 to operate any vehicle defined in this Chapter in violation of any of the provisions of this Chapter within the City. It is a rebuttable presumption that the person having charge of the person under 18 years of age allowed that person to operate the vehicle in violation of this Chapter.

CHAPTER 13-21

ARREST PROCEDURE

SECTIONS:

- 13-2101. Halting Person for Violating Traffic Regulations: Duty of Officer Halting.
- 13-2102. Hearing - Time - Promise of Defendant to Appear Failure to Appear Penalty.
- 13-2103. Offenses Under Which Person Halted May Not be Entitled to Release Upon Promise to Appear.
- 13-2104. Arrest of Non-resident Traffic Violator.
- 13-2105. Fines and Forfeitures, Disposition of.
- 13-2106. Tagging Motor Vehicles.
- 13-2107. Reports Kept by Municipal Judge.
- 13-2108. When Copy of Citation Shall be Deemed a Lawful Complaint.
- 13-2109. Failure to Comply with Traffic Citation Attached to Parked Vehicle.
- 13-2110. Presumption in Reference to Illegal Parking.
- 13-2111. When Warrant to be Issued.

13-2101. HALTING PERSON FOR VIOLATING TRAFFIC REGULATIONS: DUTY OF OFFICER HALTING.

1. Whenever any person is halted for the violation of any of the provisions of North Dakota Century Code Chapters 39-01 through 39-13, 39-18, 39-21 and 39-24, or of equivalent City ordinances, the officer halting that person, except as otherwise provided in Section 39-07-09 and Section 39-20-03.1 or 39-02-03.2 of the North Dakota Century Code may:
 - a. Take the name and address of the person;
 - b. Take the license number of the person's motor vehicle; and
 - c. Issue a summons or otherwise notify that person in writing to appear at a time and place to be specified in the summons or notice.
2. A halting officer employed by any political subdivision of the state may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a non-criminal offense under

Section 39-06.1-02 of the North Dakota Century Code or equivalent city ordinance. The officer shall provide the person with an envelope for use in mailing the bond.

(Source: North Dakota Cent. Code § 39-07-07)

13-2102. HEARING - TIME - PROMISE OF DEFENDANT TO APPEAR FAILURE TO APPEAR - PENALTY. The time to be specified in the summons or notice provided for in section 13-2101 must be within thirty-five (35) days after the issuance of the summons or notice or earlier if so ordered by the municipal judge or if the person halted demands an earlier hearing. If the person halted desires, the person may have the right, at a convenient hour, to an immediate hearing or to a hearing within twenty-four (24) hours. The hearing must be before the municipal court. Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, such officer shall release the person from custody. Any person refusing to give a written promise to appear must be taken immediately by the halting officer before the nearest or most accessible magistrate, or to such other place or before such other person as may be provided by a statute or ordinance authorizing the giving of bail. Any person willfully violating the person's written promise to appear is guilty of an offense, regarding of the disposition of the charge upon which the person originally was halted. The time limitations for a hearing as provided by this section do not preclude a recharging of the alleged violation if the person being charged receives a new summons or notice subject to the provisions of this section.

(Source: North Dakota Cent. Code § 39-07-08)

13-2103. OFFENSES UNDER WHICH PERSON HALTED MAY NOT BE ENTITLED TO RELEASE UPON PROMISE TO APPEAR. The provisions of Section 13-2101 do not apply to a person if:

1. The halting officer has good reason to believe the person guilty of any felony or if the person is halted and charged with any of the offenses listed in Section 39-06.1-05 of the North Dakota Century Code, but not listed in subsection 2; or
2. The halting officer, acting within the officer's discretion, determines that it is inadvisable to release that person upon a promise to appear and if the person has been halted and charged with any of the following offenses:
 - a. Reckless driving.
 - b. Driving in excess of speed limitations established by the state or by local authorities in their respective jurisdictions.

- c. Driving while license or driving privilege is suspended or revoked for violation of North Dakota Century Code Section 39-06-42, or an equivalent ordinance.
- d. Operating a modified vehicle.
- e. Driving without liability insurance in violation of North Dakota Century Code Section 39-08-20.
- f. Failing to display a placard or flag, in violation of any rule implementing North Dakota Century Code Section 39-21-22, while transporting explosive or hazardous materials.
- g. Operating an unsafe vehicle in violation of subsection 1 of North Dakota Century Code Section 39-21-45.

(Source: North Dakota Cent. Code § 39-07-09)

13-2104. ARREST OF NON-RESIDENT TRAFFIC VIOLATOR. A police officer at the scene of a traffic accident may arrest without a warrant any driver of a vehicle who is a non-resident of this State and who is involved in the accident when based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this title in connection with the accident, and if the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in Court. Whenever any person is arrested under the provisions of this section, he shall be taken without unnecessary delay before the proper magistrate.

13-2105. FINES AND FORFEITURES, DISPOSITION OF. All fines or forfeitures collected upon conviction, or upon forfeiture of bail of any person charged with the violation of any provision of this title shall be disposed of as provided by law. The municipal judge shall file with police chief a schedule in writing, subscribed by the municipal judge, indicating the amount of bail fixed by such municipal judge for the release of persons arrested or charged with any violation of this title and based on the offense charged, which schedule shall be applicable for the bail to be furnished in his absence from the municipal court, and any person who pays or delivers such bail to the Chief of Police or any other person in charge of the police department at the time, but during the absence of the municipal judge in municipal court, shall be immediately released from custody. Provided, that the payment of delivery of such bail shall be immediately released from custody. Provided, that the payment of delivery of such bail shall be a waiver of any defect or irregularity or any previous defect or irregularity in

such proceedings, including the arrest of such person; and provided further, that the municipal judge may in all cases where he is present in municipal court fix bail in such amount whereupon such conditions as may be provided by law, and within his discretion and without regard to the bail schedule provided and applicable in his absence from municipal court.

13-2106. TAGGING MOTOR VEHICLES. Any officer or representative of the police department who finds any motor vehicle located within the City in a place or in a condition which is at the time in violation of this title, may affix a tag to any prominent portion of such motor vehicle giving notice in writing requiring the owner or person in possession thereof to appear before the municipal judge at a time as provided in Section 13-2101 of this chapter. This shall constitute legal and sufficient notice requiring the owner or person in possession of said motor vehicle to appear before the municipal judge at the time or within the time specified on said tag. In the event the owner or person in possession of said motor vehicle shall fail to respond to said notice to appear before the municipal judge, at the time or within the time specified on such tag, and he may be arrested at any subsequent time and prosecuted for violation of this section.

13-2107. REPORTS KEPT BY MUNICIPAL JUDGE. The municipal judge shall keep and file a report of every case in which a person is charged with violation of any provision of this title.

13-2108. WHEN COPY OF CITATION SHALL BE DEEMED A LAWFUL COMPLAINT. In the event the form of citation includes information and is sworn to as required under the general laws of this State in respect to a complaint charging commission of the offense alleged in said citation to have been committed, then such citation when filed with a Court having jurisdiction shall be deemed to be a lawful complaint for the purpose of prosecution under this title.

13-2109. FAILURE TO COMPLY WITH TRAFFIC CITATION ATTACHED TO PARKED VEHICLE. If a violator on the restrictions of stopping, standing or parking under the traffic laws or ordinances does not appear in response to a traffic citation affixed to such motor vehicle within a period of five days, the police department shall send to the owner of the motor vehicle to which the traffic citation was fixed, a letter informing him of the violation and warning him in the event such letter is disregarded for a period of five days, a warrant of arrest will be issued.

13-2110. PRESUMPTION IN REFERENCE TO ILLEGAL PARKING. In any prosecution charging a violation of any law or regulation governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such law or regulation, together with proof that the defendant named in the complaint was at the time of such parking, the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle,

was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

13-2111. WHEN WARRANT TO BE ISSUED. In the event any person fails to comply with a traffic citation given to such person or attached to a vehicle or fails to make appearance pursuant to a summons directing an appearance in the municipal court, or if any person fails to or refuses to deposit bail as required and within the time permitted by this article, the police department shall secure from the municipal judge, a warrant for his arrest.

CHAPTER 13-22

PENALTIES, FEES AND FINES

SECTIONS:

- 13-2201. Definitions.
- 13-2202. Judicial Procedure - Criminal.
- 13-2203. Classification of Traffic Offenses.
- 13-2204. Traffic Violations Non-Criminal - Exceptions - Procedures.
- 13-2205. Notification of Parent or Guardian of Juvenile Traffic Offenders.
- 13-2206. Administrative Hearing - Procedures - Appeals - State Orders.
- 13-2207. Failure to Appear, Pay Statutory Fee, Post Bond - Procedure.
- 13-2208. Offenses Excepted.
- 13-2209. Amount of Statutory Fee.

13-2201. DEFINITIONS. As used in this title:

- 1. "Adjudication" and "admission" means an official determination, in the manner provided by law, that a traffic violation has been committed by a named driver.
- 2. "Equivalent ordinance" or "equivalent ordinances" means city, state, or other jurisdiction ordinances which are comparable to the cited statute, and define essentially the same offense, despite the fact that the language of the ordinance may differ, or differing procedural points or methods of proof may be provided.
- 3. "Halting officer" means a law enforcement officer charged with and acting under the officer's authority to halt and, if appropriate, arrest persons suspected or known to be violating statutes or ordinances regulating the operation or equipment of vehicles, or the regulation of traffic.
- 4. "Licensing authority" means the state agency authorized to issue operators' licenses.
- 5. "Point" or "points" refers to the number of demerits assigned to particular types of traffic violations, the accumulation of which will, at a stated level, result in suspension of the offender's operator's license.

(Source: North Dakota Cent. Code § 39-06.1-01)

13-2202. JUDICIAL PROCEDURE - CRIMINAL. Disposition of traffic offenses designated as criminal, herein Section 13-2203, shall be in accordance with Title 29 North Dakota Century Code,

JUDICIAL PROCEDURE, CRIMINAL, with appeals therefrom to the District Court or County Courts of Increased Jurisdiction in accordance with the statute providing therefore.

13-2203. CLASSIFICATION OF TRAFFIC OFFENSES. Violation of any city ordinance regulating traffic and providing penalties for Violation thereof are classified as criminal if contained in Chapter 13-02 or which are listed as criminal traffic offenses in Section 39-06.1-10 of the North Dakota Century Code. If there is a conflict between Chapter 13-07 and Section 39-06.1-10 of the North Dakota Century Code, the Century Code provision shall prevail. All other traffic violations for which the municipal court has jurisdiction shall be deemed to be non-criminal offenses unless a separate penalty clause providing criminal penalties is provided in the ordinance establishing the offense.

Source: Ord. 856, Sec. 4 (2010).

13-2204. TRAFFIC VIOLATIONS NON-CRIMINAL - EXCEPTIONS PROCEDURES. Any person cited, in accordance with the provisions of Sections 39-07-07 and 39-07-08 of the North Dakota Century Code, for a traffic violation under state law or municipal ordinance, other than an offense listed in Section 39-06.1-05 of the North Dakota Century Code, is deemed to be charged with a non-criminal offense. The person may appear before the designated official and pay the statutory fee for the violation charged at or before the time scheduled for a hearing. If the person has posted bond in person or by mail, the person may forfeit bond by not appearing at the designated time. If the person appears at the time scheduled in the citation, the person may make a statement in explanation of the person's action, and the official may at that time waive, reduce or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, the person is deemed to have admitted the violation and to have waived his right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the official designated in the citation must be identical to the statutory fee established by Section 39-06.1-06 of the North Dakota Century Code. Within ten (10) days after forfeiture of bond or payment of the statutory fee, the official having jurisdiction over the violation shall certify to the licensing authority:

1. Admission of the violation; and
2. In speeding violations, whether the speed charged was in excess of the lawful speed limit by more than nine (9) miles (14.8 kilometers) per hour and the miles (kilometers) per hour by which the speed limit was exceeded.

This section shall not be construed as allowing a halting officer to receive the statutory fee or bond, unless he is otherwise authorized by law to do so.

(Source: North Dakota Century Code Section 30-06.1-02)

13-2205. NOTIFICATION OF PARENT OR GUARDIAN OF JUVENILE TRAFFIC OFFENDERS. A municipal judge or municipal court clerk shall notify the parent or guardian of any juvenile appearing before the court on a traffic offense of the charge as contained in the citation, the penalty attached to the offense and the time and place of any court hearing on the matter.

(Source: North Dakota Cent. Code § 39-06.1-02.1)

13-2206. ADMINISTRATIVE HEARING - PROCEDURES - APPEALS STATE ORDERS.

1. A person cited for a traffic violation, other than an offense listed in Section 39-06.1-05 of the North Dakota Century Code, who does not follow one of the procedures set forth in Section 39-06.1-02 of the North Dakota Century Code, may request a hearing on the issue of commission of the violation charged. The hearing must be held at the time scheduled in the citation, or at the time scheduled in response to the person's request or at some future time, not to exceed ninety (90) days later, set at that first appearance.
2. At the time of a request for a hearing on the issue of commission of the violation, the person charged shall deposit with the official having jurisdiction an appearance bond equal to the statutory fee for the violation charged.
3. If a person cited for a traffic violation, other than an offense listed in Section 39-06.1-05 of the North Dakota Century Code, has requested a hearing on the issue of the commission of the violation charged and appears at the time scheduled for the hearing, and the state or city, as the case may be, does not appear or is not ready to prove the commission of a charged violation at the hearing, the official shall dismiss the charge.
4. If the official finds that the person had committed the traffic violation, the official shall notify the licensing authority of that fact, and whether the person was driving more than nine (9) miles (14.48 kilometers) per hour in excess of the lawful limit, stating specifically the miles (kilometers) per hour in excess of the lawful limit, if charged with a speeding violation, within ten (10) days of the date of the hearing. The fact that a person has admitted a violation, or has, in any proceeding, been found to have committed a violation, may not be referred to in any way, nor be admissible as evidence in any court, civil, equity or criminal, except in an action or proceeding involving that person's driving license or privilege.

5. a. If a person is aggrieved by a finding that he committed the violation, the person may, without payment of a filing fee, appeal that finding to the district court for trial anew. If, after trial in the appellate court, the person is again found to have committed the violation, there shall be no further appeal. Notice of appeal under this subsection must be given within thirty (30) days after a finding of commission of a violation is entered by the official. Oral notice of appeal may be given to the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal shall be in writing and filed with the official, and a copy of the notice must be served upon the prosecuting attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 4, nor to stay appropriate action by the licensing authority upon receipt of that report.
- b. The appellate court upon application by the appellant may:
 - (1) Order a stay of any action by the licensing authority during pendency of the appeal, but not to exceed a period of one hundred twenty (120) days;
 - (2) Order a stay and that the appellant be issued a temporary restricted driving certificate by the licensing authority to be effective for no more than one hundred twenty (120) days; or
 - (3) Deny the application.

An application for a stay or temporary certificate under this subdivision must be accompanied by a certified copy of the appellant's driving record, for the furnishing of which the licensing authority may charge a fee of two dollars (\$2.00). Any order granting a stay or a temporary certificate must be forwarded forthwith by the Clerk of Court to the licensing authority, which shall issue a temporary certificate in accordance with the order in the manner provided by law. A court may not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. A person who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued pursuant to

this subdivision is guilty of a traffic violation and must be assessed a fee of twenty dollars (\$20.00).

- c. If the person charged is found not to have committed the violation by the appellate court, the Clerk of Court shall report that fact to the licensing authority immediately. If an appeal under this subsection is from a violation of a City ordinance, the city attorney shall prosecute the appeal. In all other cases, the appropriate state's attorney shall prosecute the appeal.
6. The state or the city, as the case may be, must prove the commission of a charged violation at the hearing or appeal under this section by a fair preponderance of the evidence. Upon an appeal under subsection 5, the court and parties shall follow, to the extent applicable, the North Dakota Rules of Civil Procedure. If on the appeal from the finding of the official the finding is affirmed, costs may be assessed at the discretion of the trial judge.
7. As used in Sections 39-06.1-02, 39-06.1-03 and 39.06.1-04 of the North Dakota Century Code, the word "official" means a municipal judge or a magistrate or other qualified person appointed by the presiding judge of the judicial district to serve as such official for all or a specified part of the judicial district.

(Source: North Dakota Cent. Code § 39-06.1-03)

13-2207. FAILURE TO APPEAR, PAY STATUTORY FEE, POST BOND PROCEDURE. If a person fails to choose one of the methods of proceeding set forth in Sections 13-2204 or 13-2206, the person must be deemed to have admitted to commission of the violation charged, and the official having jurisdiction shall report such fact to the licensing authority within ten (10) days after the date set for the hearing. Failure to appear at the time designated, after signing a promise to appear, without paying the statutory fee or posting and forfeiting bond is a class B misdemeanor. Failure to appear without just cause at the hearing must also be deemed an admission of commission of the violation charged.

(Source: North Dakota Cent. Code § 36-01.1-04)

13-2208. OFFENSES EXCEPTED. The procedures authorized under Sections 39-06.1-02 and 39.06.1-03 of the North Dakota Century Code may not be utilized by a person charged with one of the following offenses:

- a. Driving or being in actual physical control of a vehicle in violation of Section 13-0203.

- b. Reckless driving or aggravated reckless driving in violation of Section 13-0201.
- c. A violation of Chapter 12.1-16 of the North Dakota Century Code resulting from the operation of a motor vehicle.
- d. Leaving the scene of an accident in violation of Sections 39-08-04, 39-08-05, 39-08-07, 39-08-08 of the North Dakota Century Code, or equivalent ordinances.
- e. Driving while license or driving privilege is suspended or revoked in violation of Section 39-06-42 of the North Dakota Century Code, or an equivalent ordinance.
- f. Violating subdivisions b or c of subsection 5 of Section 39-24-09 of the North Dakota Century Code.
- g. Operating a modified motor vehicle in violation of Section 39-21-45.1 of the North Dakota Century Code.
- h. Driving without liability insurance in violation of Section 39-08-20 of the North Dakota Century Code.
- i. Failing to display a placard or flag, in violation of any rule implementing Section 39-21-44 of the North Dakota Century Code, while transporting explosive or hazardous materials.
- j. Operating an unsafe vehicle in violation of subsection 1 of Section 39-21-46 of the North Dakota Century Code.

(Source: North Dakota Cent. Code § 39-06.1-05)

13-2209. AMOUNT OF STATUTORY FEE. The fees required for a disposition pursuant to either Section 13-2204 or Section 13-2206 shall be as follows:

- 1. The amount set by the State Legislature in Section 39-06.1-06 of the North Dakota Century Code, or elsewhere in the North Dakota Century Code for the same offense.
- 2. For violations not covered by subsection 1 which constitute a class B misdemeanor, a fine of any amount not to exceed \$1,500 or 30 days imprisonment, or both.

3. For violations not covered by subsection 1 which constitute an infraction, a penalty not to exceed \$1,000, as determined by the discretion of the Municipal Judge.

Source: Ord. 826, Sec. 2 (2008); Ord. 961, Sec. 9 (2013)

TITLE XIV

FRANCHISES

CHAPTERS:

- 14-01. Northern States Power Company - Gas.
- 14-02. Northern States Power Company - Electrical.
- 14-03. Cass County Electric Cooperative, Inc.
- 14-04. Regulation of Cable Communications
- 14-05. Bench Sign Franchise.

CHAPTER 14-01

NORTHERN STATES POWER COMPANY - GAS

SECTIONS:

- 14-0101. Definitions.
- 14-0102. Grant of Franchise.
- 14-0103. Restrictions.
- 14-0104. Service and Rates.
- 14-0105. Relocating.
- 14-0106. Indemnification.
- 14-0107. Vacation of Public Ways.
- 14-0108. Written Acceptance.
- 14-0109. General Provisions.
- 14-0110. Effective Date.

14-0101. Definitions

1. "City" means the City of West Fargo, County of Cass, State of North Dakota.
2. "City Utility System" means the facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.
3. "Company" means Northern States Power Company, a Minnesota corporation, its successors and assigns.
4. "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.
5. "Notice" means a writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to the General Manager and Chief Executive, NSP-North Dakota, P.O. Box 2747, Fargo, ND 58108. Notice to the City shall be mailed to the City Auditor; 800 Fourth Avenue East, West Fargo, ND 58078. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
6. "Public Way" means any street, alley, walkway or other public right-of-way within the City.

14-0102. Grant of Franchise. City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the non-exclusive right and privilege of erecting a gas distribution system and using the Public Ways of City for the purpose of constructing, operating, repairing, and maintaining in, on, over, under and across the same, all gas pipes, mains and

appurtenances usually, conveniently, or necessarily used in connection therewith, for the purpose of the transmission of gas, or the distribution of gas, for public and private use within and through the limits of City as its boundaries exist or as they may be extended in the future. Company may also do all reasonable things necessary or customary to accomplish these purposes, subject, however, to the further provisions of this franchise agreement.

14-0103. Restrictions.

1. All gas pipes, mains, regulators, and other property and facilities shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over said Public Ways. Company's construction, operation, repair, maintenance and location of such facilities shall be subject to permits, including excavation permits, required by ordinance, and other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground gas facilities in place, provided at City's request Company removes abandoned metal pipe and other inflexible structures interfering with a City improvement project to the extent Company can so remove without doing additional excavation to that already done by the City.
2. In constructing, removing, replacing, repairing, or maintaining said gas pipes, mains and appurtenances, Company shall, in all cases, place the Public Ways in, on, under or across which the same are located in as good condition as they were prior to said operation and maintain any restored paved surface in such condition for two years thereafter.

14-0104. Service and Rates. The service to be provided and the rates to be charged by Company for gas service in City are subject to the jurisdiction of the Public Service Commission of this State or its successor agency.

14-0105. Relocating.

1. Whenever the City, at its cost, including by assessment to property owners, shall grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System therein and shall, in the proper exercise of its police power, and with due regard to seasonable working conditions, when necessary, and after approval of its final plans have been obtained, order Company to relocate permanently its mains, services, and other property located in said Public Way, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any Public Way or to construct or

reconstruct any City Utility System therein. However, after Company has so relocated, if a subsequent relocation or relocations shall be ordered within five (5) years from and after first relocation, City shall reimburse Company for such non-betterment relocation expense which Company may incur on a time and material basis; provided, if subsequent relocations are required because of the extension of City Utility System to previously unserved area, Company may be required to relocate at its own expense at any time.

2. Nothing contained in this franchise shall require Company to relocate, remove, replace or reconstruct at its own expense its facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.
3. Any relocation, removal, or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally-aided highway project or federally-aided improvement thereto shall be governed by the provisions of North Dakota law as supplemented or amended.
4. The provisions of this franchise shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Way or Public Ground was established, or Company's rights under state or county permit.

14-0106. Indemnification.

1. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the gas facilities located in the Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.
2. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the

City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

14-0107. Vacation of Public Ways. The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required primarily for a City improvement project, the vacation of any Public Way, after the installation of gas facilities, shall not operate to deprive Company of its rights to operate and maintain such gas facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under North Dakota law.

14-0108. Written Acceptance. Company shall, if it accepts this Ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Auditor after the final passage and any required publication of this Ordinance. The City, by resolution, may revoke this franchise agreement if Company does not file a written acceptance within 90 days after publication.

14-0109. General Provisions.

1. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.
2. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties

are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

3. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof or otherwise give rise to any cause of action in any person not a party hereto.
4. Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.
5. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Company's facilities while performing any activity.

14-0110. Effective Date. This Ordinance is effective as provided by statute or charter and upon acceptance by Company as provided in Section 14-0108.

Source: Ord. 277, Sec. 1-11 (1979); Ord. 572, Sec. 1 (1999).

CHAPTER 14-02

NORTHERN STATES POWER COMPANY D/B/A XCEL ENERGY

Source: Ord. 428, Sec. 1 (1992); Ord. 919, Sec. 1 (2012)

14-0201. There be and hereby is granted to Northern States Power Company, A Minnesota Corporation D/B/A Xcel Energy, its successors and assigns, hereinafter referred to as "Company," during the period of 20 years from May 1, 2012, the right and privilege of constructing, operating, repairing, and maintaining, in, on, over, under, and across the streets, alleys, and public grounds of said City, an electric distribution system and electric transmission lines, including all poles, pole lines, and fixtures and appurtenances, usually, conveniently, or necessarily used in connection therewith, for the purpose of transmitting and furnishing electric energy for light, heat, power, and other purposes for public and private use in and to said City and the inhabitants thereof, and others, and for the purpose of transmitting into and through said City such electric energy, provided that such electric distribution system and transmission lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along and over said streets, alleys, and public grounds, and provided that Company in the construction, operation, repair and maintenance of such poles, pole lines and fixtures and appurtenances, shall be subject to such conditions, restrictions and regulations as may be imposed by the governing body of the City of West Fargo.

14-0202. In consideration of the permit hereby granted and in order to defray the City's costs of administering and regulating the activities of the Company in connection therewith and for the use of the streets, alleys, public grounds of the City by the Company, the Company hereby agrees to pay City a fee equal to two per cent (2%) of the Company's gross revenues from sales of electricity within the City. It is understood that Company may add to its billings to consumers within the City, a surcharge of two percent (2%) to reimburse the Company for the costs of such fee. This fee shall be payable monthly and Company agrees, upon execution of this Agreement, to file monthly statements with the City, within fifteen days of the end of each month, setting out the amount of its gross revenues from the sale of electricity within the City the previous month. Company shall also submit at that time whatever fee payments may then be due. On or before 120 days after the end of Company's fiscal year and in each year of this agreement, Company shall provide City with a certification of the gross revenues for the preceding year, prepared by an independent certified accountant in accordance with generally accepted auditing standards, and that fairly and accurately represents the gross revenues of the Company for said year. The calculation of the 2% franchise fee shall be clearly shown as part of this certification in a form approved by the City Administrator. This certification shall be used to determine the exact amount of payments due the

City and to correct any overpayments or underpayments by the Company. Provided, that the 2% fee will commence with Company's first billing month that does not include any sales of electricity prior to June 1, 2012. Nothing in this paragraph shall be construed as restricting the City from either raising or lowering the two per cent franchise fee provided herein in a non-discriminatory basis. Nor shall the Franchise be construed as a limitation on the City's power to tax the Company.

The franchise fee payable by the Company will be generally applicable and uniformly applied to all other suppliers of electricity in the City of West Fargo. Should the scope of application, exclusions, or rates charged to any other supplier of electricity in the City of West Fargo result in the other supplier paying less than it would have paid had the fee payable hereunder been applied to it, the Company will be entitled to pay its franchise fee on the same basis as the City of West Fargo charges such other supplier.

14-0203. The granting of this franchise by the City of West Fargo, shall in no way be construed to limit or restrict the right of the City to exercise the powers of eminent domain as set forth in Chapter 32-15 of the North Dakota Century Code and any other applicable laws of the State of North Dakota.

14-0204. The granting of this franchise by the City of West Fargo shall in no way be construed to limit or restrict the right of the City to establish a municipal electric distribution system in accordance with Chapter 40-33 of the North Dakota Century Code and any other applicable laws of the State of North Dakota.

14-0205. There is also granted to Company, during the term hereof, permission and authority to trim all trees and shrubs in the streets, alleys, and public grounds of said City interfering with the proper construction, operation repair and maintenance of any poles, pole lines, and fixtures or appurtenances, installed in pursuance of the authority hereby granted, provided that Company shall save said City harmless from any liability in the premises, and provided the Company shall comply with all ordinances of the City relating thereto.

14-0206. The City shall give the Company at least two weeks prior written notice of a proposed vacation of a public way. Except where required solely for a City improvement project, the vacation of any public way, after the installation of electric facilities, shall not operate to deprive Company of its rights to operate and maintain such electric facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company.

14-0207. Nothing in this Ordinance contained shall be construed as giving to Company any exclusive privilege in, on,

under, or across the streets, alleys or public grounds of said City.

14-0208. Nothing in this Ordinance shall be construed as granting Company an exclusive franchise to provide electric service to all users located within the corporate limits of the City of West Fargo.

14-02309. Company shall have full right and authority to assign to any person, persons, firm or corporation all the rights conferred upon it by this Ordinance, provided that the assignment is authorized by applicable laws and regulations and that the assignee of said rights, by accepting such assignment shall become subject to the terms and provisions of this Ordinance.

14-0210. Company shall, if it accepts this Ordinance and the rights herein granted file a written acceptance of the rights hereby granted with the City Auditor within 30 days from the final passage of this Ordinance.

CHAPTER 14-03

CASS COUNTY ELECTRIC COOPERATIVE, INC.

Source: Ord. 429, Sec. 1 (1992); Ord. 911, Sec. 1 (2012)

14-0301. There be and hereby is granted to Cass County Electric Cooperative, Inc., a North Dakota corporation, its successors and assigns, hereinafter referred to as "Company," during the period of 20 years from May 1, 2012, the right and privilege of constructing, operating, repairing, and maintaining, in, on, over, under, and across the streets, alleys, and public grounds of said City, an electric distribution system and electric transmission lines, including all poles, pole lines, and fixtures and appurtenances, usually, conveniently, or necessarily used in connection therewith, for the purpose of transmitting and furnishing electric energy for light, heat, power, and other purposes for public and private use in and to said City and the inhabitants thereof, and others, and for the purpose of transmitting into and through said City such electric energy, provided that such electric distribution system and transmission lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along and over said streets, alleys, and public grounds, and provided that Company in the construction, operation, repair and maintenance of such poles, pole lines and fixtures and appurtenances, shall be subject to such conditions, restrictions and regulations as may be imposed by the governing body of the City of West Fargo.

14-0302. In consideration of the permit hereby granted and in order to defray the City's costs of administering and regulating the activities of the Company in connection therewith and for the use of the streets, alleys, public grounds of the City by the Company, the Company hereby agrees to pay City a fee equal to two per cent (2%) of the Company's gross revenues from sales of electricity within the City. It is understood that Company may add to its billings to consumers within the City, a surcharge of two percent (2%) to reimburse the Company for the costs of such fee. This fee shall be payable monthly and Company agrees, upon execution of this Agreement, to file monthly statements with the City, within fifteen days of the end of each month, setting out the amount of its gross revenues from the sale of electricity within the City the previous month. Company shall also submit at that time whatever fee payments may then be due. On or before 120 days after the end of Company's fiscal year and in each year of this agreement, Company shall provide City with a certification of the gross revenues for the preceding year, prepared by an independent certified accountant in accordance with generally accepted auditing standards, and that fairly and accurately represents the gross revenues of the Company for said year. The calculation of the 2% franchise fee shall be clearly shown as part of this certification in a form approved by the City Administrator. This certification shall be used to determine the exact amount of payments due the

City and to correct any overpayments or underpayments by the Company. Provided, that the 2% fee will commence with Company's first billing month that does not include any sales of electricity prior to June 1, 2012. Nothing in this paragraph shall be construed as restricting the City from either raising or lowering the two per cent franchise fee provided herein in a non-discriminatory basis. Nor shall the Franchise be construed as a limitation on the City's power to tax the Company.

The franchise fee payable by the Company will be generally applicable and uniformly applied to all other suppliers of electricity in the City of West Fargo. Should the scope of application, exclusions, or rates charged to any other supplier of electricity in the City of West Fargo result in the other supplier paying less than it would have paid had the fee payable hereunder been applied to it, the Company will be entitled to pay its franchise fee on the same basis as the City of West Fargo charges such other supplier.

14-0303. The granting of this franchise by the City of West Fargo, shall in no way be construed to limit or restrict the right of the City to exercise the powers of eminent domain as set forth in Chapter 32-15 of the North Dakota Century Code and any other applicable laws of the State of North Dakota.

14-0304. The granting of this franchise by the City of West Fargo shall in no way be construed to limit or restrict the right of the City to establish a municipal electric distribution system in accordance with Chapter 40-33 of the North Dakota Century Code and any other applicable laws of the State of North Dakota.

14-0305. There is also granted to Company, during the term hereof, permission and authority to trim all trees and shrubs in the streets, alleys, and public grounds of said City interfering with the proper construction, operation repair and maintenance of any poles, pole lines, and fixtures or appurtenances, installed in pursuance of the authority hereby granted, provided that Company shall save said City harmless from any liability in the premises, and provided the Company shall comply with all ordinances of the City relating thereto.

14-0306. The City shall give the Company at least two weeks prior written notice of a proposed vacation of a public way. Except where required solely for a City improvement project, the vacation of any public way, after the installation of electric facilities, shall not operate to deprive Company of its rights to operate and maintain such electric facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company.

14-0307. Nothing in this Ordinance contained shall be construed as giving to Company any exclusive privilege in, on,

under, or across the streets, alleys or public grounds of said City.

14-0308. Nothing in this Ordinance shall be construed as granting Company an exclusive franchise to provide electric service to all users located within the corporate limits of the City of West Fargo.

14-0309. Company shall have full right and authority to assign to any person, persons, firm or corporation all the rights conferred upon it by this Ordinance, provided that the assignment is authorized by applicable laws and regulations and that the assignee of said rights, by accepting such assignment shall become subject to the terms and provisions of this Ordinance.

14-0310. Company shall, if it accepts this Ordinance and the rights herein granted file a written acceptance of the rights hereby granted with the City Auditor within 30 days from the final passage of this Ordinance.

CHAPTER 14-04

REGULATION OF CABLE COMMUNICATIONS (Source: Ord. 566, Sec. 1, 1999)

Section:

- 14-0401. Cable Franchises
 - 14-0402. Statement of Intent and Purpose
 - 14-0403. Short Title
 - 14-0404. Definitions
 - 14-0405. Grant of Authority and General Provisions
 - 14-0406. Design Provisions
 - 14-0407. Service Provisions
 - 14-0408. Operation and Reporting Provisions
 - 14-0409. Consumer Protection Provisions
 - 14-0410. General Financial and Insurance Provisions
 - 14-0411. Foreclosure, Receivership and Abandonment
 - 14-0412. Removal, Transfer and Purchase
 - 14-0413. Rights of Individuals Protected
 - 14-0414. Miscellaneous Provisions
-

Section 14-0401. CABLE FRANCHISES.

A. Cable One, Inc. is hereby granted a non-exclusive franchise to install, construct, operate and maintain a cable television system within the corporate limits of the City of West Fargo, North Dakota, effective upon their acceptance and entering into a franchise agreement consistent with this ordinance governing the relationship between the City and Cable One, Inc.

B. Midcontinent Communications, G.P., is hereby granted a non-exclusive franchise to install, construct, operate and maintain a cable television system within the corporate city limits of the City of West Fargo, North Dakota, effective upon their acceptance and entering into a franchise agreement consistent with this ordinance governing the relationship between the City and Midcontinent Communications, G.P. The prior granted limited cable television franchise will terminate upon the effective date of the new franchise.

Source: Ord. 777, Sec. 1 (2006); Ord. 801, Sec. 1 (2007)

Section 14-0402. STATEMENT OF INTENT AND PURPOSE. The City intends, by the adoption of this ordinance, to bring about the continued development and operation of a cable communications System. Such a development can contribute significantly to the communication needs and desires of citizens of the City of West Fargo. Further, by the continued development and operation of a

System, City may help achieve better utilization and improvement of public services. No person or company shall operate a cable communications system within the City of West Fargo without being granted a franchise by the City of West Fargo.

Section 14-0403. SHORT TITLE. This ordinance shall be known and cited as the "City of West Fargo Cable Communications Ordinance," hereinafter in this document referred to as "Ordinance."

Section 14-0404. DEFINITIONS. For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Approved" means approval by the City under the requirements of this Ordinance as applied to a location, condition, technical standard, or method of construction or approval by other authorities designated by law, ordinance, or this Ordinance to give approval to the matter in question.
- B. "Basic Service" means a group of Cable Services distributed over the subscriber network, consisting of that service tier which, at a minimum, includes the retransmission of local television broadcast signals.
- C. "Cable Act" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)), as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385; the Telecommunications Act of 1996, Pub. L. No. and any amendments thereto.
- D. "Cable Programming Service" means all video programming provided over a Cable System except that provided on Basic Service or Pay Television.
- E. "Cable Service" means: (i) the one-way transmission to subscribers of video programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- F. "Cable Television System" or "Cable System" or "System" means a facility consisting of a set of closed transmission paths and associated signal generation,

reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (b) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right of way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers; or (d) any facilities of any electric utility used solely for operating its electric utility System.

- G. "Channel" means a band of frequencies in the electromagnetic spectrum, or any other means of transmission (including, without limitation, optical fibers or any other means now available or that may become available), which is capable of carrying a video signal, an audio signal, a voice signal, or a data signal.
- H. "City" means the City of West Fargo, North Dakota, or, as appropriate in the case of specific provisions of this Ordinance, any board, bureau, authority, agency, commission, department of, or any other entity of or acting on behalf of, the City of West Fargo, or any officer, official, employee, or agent thereof, the designee of any of the foregoing, or any successor thereto.
- I. "City Commission" means the governing body of the City.
- J. "Complaint" means any verbal or written inquiry, allegation or assertion made by a person which requires subsequent corrective action to the System or any portion thereof, or raises an objection to the programming or business practices of a cable Operator. The term "Complaint" does not include an inquiry which is immediately answered by an Operator.
- K. "Converter" means an electronic device with an appropriate channel selector which permits a Subscriber to view all signals purchased.
- L. "Drop" means the cable that connects the Subscriber terminal at a point in the Subscriber's home, designated

by the Subscriber, to the nearest feeder cable of the System.

- M. "FCC" means the Federal Communications Commission, its designee, or any successor thereto.
- N. "Franchise Area" means the territory within the City throughout which an Operator shall be authorized to construct, maintain and operate its System and shall include any enlargements thereof and additions thereto.
- O. "Gross Revenues" means any and all revenue in any way derived and collected directly or indirectly by Operator, its affiliates, subsidiaries, parents, or any person in which Operator has a financial interest, from or in connection with the operation, of all or any part of a Cable Television System franchised pursuant to this Ordinance, including, but not limited to, revenue from all Cable Service fees including user fees, regular subscriber service fees, installation and reconnection fees, leased channel fees, Converter and other equipment rentals, and advertising revenues (advertising revenues attributable to the City shall be determined by apportioning the total advertising revenue of the Operator's System among those governmental units entitled to a portion of those revenues based on the number of Subscribers in each such unit as a percentage of the total number subscribers in all such units); provided, however, that this shall not include any taxes imposed directly upon any Subscriber or user by a state, local or other governmental unit and collected by such operator on behalf of such governmental unit. It does include money collected from subscribers that is allocated by Operator to pay the franchise fee.
- P. "Installation" means the act of connecting the System from the feeder cable to the Subscriber terminal so that Cable Service may be received by the Subscriber.
- Q. "Noncable Service" means any service which is distributed over the System other than a Cable Service.
- R. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases "Normal Business Hours" shall include at least the hours from 8:00 a.m. to 5:00 p.m.
- S. "Operator" means any person, persons, partnership, firm, company, corporation or association, or the assignee, affiliate, parent, subsidiary, or successor of the

operator, operating a Cable System within the corporate limits of the City.

- T. "Pay Television" means the delivery over the System of per-channel, per-channel group or per-program audio-visual signals to Subscribers for a fee or charge, in excess of the charge for Basic Service or Cable Programming Services.
- U. "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.
- V. "Public Property" means any real property, other than a street, owned by any governmental unit.
- W. "Signal" means any transmission of radio frequency energy or of optical information.
- X. "Street" means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, utility easement or any public easement or right-of-way now or hereafter held by the City which shall, within its proper use and meaning in the sole opinion of the City, entitle an Operator to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.
- Y. "Subscriber" means any person or entity who lawfully subscribes to a Cable Service provided by an Operator by means of or in connection with the System.
- Z. "System Upgrade" means the process by which the System shall be upgraded pursuant to Section 14-0406.C herein.
- AA. "Two-way Operational System" means that the headend, trunk cables, distribution plant, amplifiers, and other technical components of the System have the requisite equipment in place to pass video, audio, voice, and/or data signals in both directions simultaneously.

Section 14-0405. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

A. Authority for Use of Streets.

1. For the purpose of constructing, operating, and maintaining a System in the City, an Operator may

erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

2. Prior to any construction, reconstruction, or rebuild of the System in the right of way, the Operator shall, in each case, file plans with the City and receive written approval of such plans.
3. The operator shall submit to the City all requests for the construction of new poles and/or new underground cable construction, and their proposed locations. Approval of the new location of new poles and/or new underground cable construction shall be granted by the City after such locations have been approved by the appropriate City authority. This provision shall not apply to existing poles or to underground cable construction which utilizes existing municipal or utility easements.
4. The Operator shall construct and maintain the System so as not to interfere with other uses of streets. Absent specific approval from the City to do otherwise, the Operator shall make use of existing poles and other facilities available to the Operator. The Operator shall individually notify in writing all residents whose property or property access shall be directly affected by proposed underground work not less than forty-eight (48) hours prior to commencement of that work. Such notice shall include the Operator's telephone number and the responsible employee of the Operator.
5. Notwithstanding the above grant to use the streets, no street shall be used by the Operator if the City's Public Works Director, in the City's sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used. In addition, the City's Public Works Director may designate a reasonable alternate location or route in a street to be used by the Operator so as

not to interfere with existing or future utilities in the street.

- B. Nature of Ordinance. This Ordinance and any franchise granted hereunder shall authorize an Operator to provide only Cable Services on the System. This Ordinance and any franchise granted hereunder do not authorize an Operator to provide any Noncable Services (including telecommunications or other voice or data information) on the System, provided, however, that an Operator may petition the City for any necessary authority to provide non-cable services on the system.
- C. City's Rights Reserved. The City expressly reserves the following rights which shall not be deemed to be waived or abridged by this Ordinance: (1) to exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the City; (2) to adopt, in addition to the provisions contained in this Ordinance, or any existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power; and (3) to modify this Ordinance upon mutual agreement of the City and Operator so as to require additional or greater standards of construction, operation, maintenance or otherwise, on the part of Operator to reflect technical, economic or jurisdictional changes occurring during the franchise term and to enable the City and the Operator to take advantage of new developments in the cable television industry so as to more effectively, efficiently and economically serve the public.
- D. Use of the Operator Facilities. The City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of the Operator, any wires and fixtures desired by the City for noncompetitive services to the extent that such installation and maintenance does not interfere with existing and future operations of the Operator. City shall indemnify and hold harmless Operator for any losses or causes of action resulting from City's negligent use of Operator's facilities.

Section 14-0406. DESIGN PROVISIONS.

A. System Design.

- 1. The operator shall, within an agreed upon time period as more specifically defined in any franchise granted pursuant to this Ordinance, immediately undertake all necessary steps to construct and thereafter operate and maintain the

System to a minimum of 550 MHZ having the capability of delivering at least 70 downstream channels and 25 MHZ of upstream capacity with a minimum of fifty (50) downstream channels initially activated.

2. The Operator shall provide the City a full description of the System proposed for construction and shall, upon completion of the System upgrade, submit to the City, in computer form, "as-built" maps for the entire System, as upgraded, to the extent such maps have not been previously provided to the City.

B. Construction Terms.

1. The Operator shall comply with all applicable federal, state, and City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not unreasonably interfere with the operation of any existing MATV, SMATV, MDS, MMDS, DBS, Cable Television or other distribution System in said structure, including any conduit used in connection with such other System. Operators of MATV, SMATV, MDS, MMDS, DBS, Cable Television or other distribution Systems shall install their equipment so as not to unreasonably interfere with the operations of any Cable Television System.
3. The Operator must comply with, and shall ensure that its subcontractors comply with, all rules, regulations, and standards of the City. If the installation, construction, or operation of the System does not comply with such rules, regulations, and standards, the operator must, at its sole cost, remove and reinstall such cables, wires, or other component parts of the System to ensure compliance with such rules, regulations, and standards.
4. The Operator shall use its best efforts to minimize Cable Service interruptions during any rebuild period.

C. Construction of System or System Upgrade.

1. Any Operator planning construction or upgrade of a Cable Television System in the City must, submit to

the City a construction schedule and specific construction sequencing plans for the construction or System Upgrade accompanied by a separate map showing: (a) the location of the master headend, all subheadends/hubs, headend to hub interconnect network, fiber backbone, and all studio facilities within the System; and (b) the proposed distribution of all principal trunk lines throughout the System (including termination points of all lines). All such construction schedules shall be fully justified on the basis of factors which will affect construction in the City, and the Operator should set out any factors which may adversely affect its ability to meet the schedules. The Operator must submit an updated construction schedule to the director on a quarterly basis until the completion of the construction or System Upgrade.

2. Subject to written request of the City, no less than thirty (30) days prior to completion of System construction or upgrade, the Operator shall notify the City that construction or System Upgrade is substantially complete. The City and the Operator shall arrange for such inspections, as the City shall deem appropriate, to enable the City to ascertain whether the construction or System Upgrade has been completed as scheduled. The City shall accept the completion of the construction or System Upgrade upon the City's satisfaction that the obligations of the Operator to complete the construction or System Upgrade have been fulfilled in all respects.

D. Two-Way System. The Operator shall provide a Cable Television System capable of (including, but not limited to, return amplifier housings) non-voice return communications. The City and the Operator will continue to review, during the term of any franchise granted pursuant to this Ordinance, the need and economic feasibility for implementation of a two-way operational System.

E. Interconnection. Whenever it is technically and practically feasible, an Operator may so construct, operate and modify its System so as to tie the same into all other Cable Systems within and adjacent to the City.

F. Provision of Service. (Source: Ord. 1038, Sec. 1 [2015])

1. After Cable Service has been established by activating trunk and distribution cable for any

area, the Operator shall provide Cable Service to any requesting person, subject to lawful installation policies of the Operator, 95% of the time within that area seven (7) days from the date of request, provided the installation request is 150 feet or less from the feeder cable.

2. The Operator shall install and provide its most complete (highest) Cable Service, excluding Pay Television and Digital, to all non-residential public buildings designated by the City at no charge for either the initial installation or for monthly Cable Service provided at each location. Each of these installations should include a single drop, one outlet, and a converter if necessary to receive such services. The public buildings to be provided this service shall include the following:
 - a. All public and parochial schools;
 - b. The city fire stations;
 - c. The City Hall complex;
 - d. All public library locations within the city limits;
 - e. The city police stations;
 - f. Public Works Facility; and
 - g. Any new or relocated non-residential public building located along existing cable plant.
3. There shall be no limit on the number of television receivers an institution may operate from the connection referenced in paragraph 2 above, unless otherwise agreed upon by the Operator and the City. The expenses of installing and maintaining an internal distribution System shall be the responsibility of the institution.
4. Any internal distribution System installed by an institution listed in this section shall conform to all applicable federal, state, and city rules, regulations, and ordinances and shall be operated in such a manner so as not to interfere with the Operator's System if such free Cable Service is to be maintained.

G. Technical Standards. The System shall be designed, constructed and operated so as to meet those technical

standards promulgated by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations relating to cable communications Systems and found in Code of Federal Regulations, Title 47, Sections 76.601 to 76.617, as amended, or as may, from time to time, be amended. The results of tests required by the FCC must be filed with the City within ten (10) days of the receipt of a request for such results. The City shall also have the right to request a written list of FCC test result reports prepared by Operator.

H. Special Testing.

1. At any time after commencement of Cable Service to Subscribers, the City may require Operator to perform additional tests, full or partial repeat tests, different test procedures, or tests involving a specific Subscriber's Drop. Such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests will be limited to the particular matter in controversy. Operator shall bear the expense for such special testing.
2. The City shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to the Operator or to the Subscriber.

I. Semi-Annual Testing. The Operator shall conduct semi-annual technical performance tests and provide, upon request, copies of the test results to the City. These tests shall be conducted at six (6) widely scattered System extremity test points and shall include: summation sweep response across the entire band; signal-to-noise ratio measurements on at least two (2) channels; hum-to-carrier level measurements on one (1) channel; and subjective picture quality evaluations on all active channels. (Source: Ord. 1038, Sec. 2 [2015])

J. Operational Status Reports. Upon request, the Operator shall provide to the City the following statistical information: 1) number of repair service requests; 2) breakdown by type of complaints received; 3) breakdown by cause of problems, experienced on the System; 4) resolution of complaints received or problems experienced with the System.

K. Test and Compliance Procedures.

1. Operator shall perform all tests required by the FCC to verify compliance with all applicable technical standards.

2. The tests may, upon request of the City, be witnessed by representatives of the City.
3. If one or more of the locations tested fail to meet the performance standards, the Operator shall immediately, normally no longer than seven (7) days from the date of testing, complete corrective measures and report, if requested, to the City the corrective measures so taken. The entire test shall then be repeated for all locations which failed initial testing. The Operator shall bear the expense of all such testing.

L. Construction Timetable.

1. The Operator shall give notice to the City at least thirty (30) days prior to the anticipated completion date of System construction or upgrade and again at such time as the Operator has, in fact, completed all construction.
2. Upon receipt of notice that all construction has been completed, the City shall have sixty (60) days to obtain a written report from an independent engineer confirming the completion of construction; provided, however, that if the City fails to obtain such a written report within said sixty (60) days, the construction shall be deemed completed, unless the failure to obtain such a report is due to unforeseen events, acts of God, or events beyond the reasonable control of the City.
3. Notwithstanding anything contained herein to the contrary, the City may condition completion of construction upon receipt of a written report from an independent engineer, which report confirms the following:
 - a. That all construction has been completed or otherwise satisfactorily resolved.
 - b. Satisfactory test results using the technical standards set forth within this Ordinance at up to ten (10) widely separated Subscriber Drops selected by the independent engineer and using the following tests:
 - (1) Signal level
 - (2) Hum
 - (3) Bandpass response of System
 - (4) Carrier to noise

- c. Compliance with all applicable codes and standards.
 - d. Installation and the proper working of the emergency alert System.
 - e. Carriage of the Basic Service.
- M. Construction Delay. The Operator shall notify the City of any delay in the construction. Any and all modifications or delays in the construction schedule shall be subject to approval of the City.
- N. Construction Standards.
 - 1. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all state and local codes where applicable.
 - 2. All installation of electronic equipment shall be of a nature consistent with industry practices, durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and the ordinances and regulations of the FCC, State of North Dakota, and the City that are in effect now or in the future.
 - 3. Antennas and their supporting structures (tower) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local laws, codes and regulations.
 - 4. All of the Operator's plant and equipment, including, but not limited to, the antenna site, headend and distribution System, towers, house connections, structures, poles, wire, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with known and contemplated improvements the City may deem appropriate to make or to interfere in any manner with the legal rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

5. The Operator shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

O. Construction Codes and Permits.

1. The Operator shall obtain all required permits from the City before commencing any work requiring a permit, including the opening or disturbance of any street, or public property or public easement within the City. The Operator shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in the City.
2. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Ordinance and to make such tests as it shall find necessary to ensure compliance with the terms of the Ordinance and applicable provisions of local, state and federal law.
3. Nothing contained in this Ordinance shall be construed to give the Operator the authority to enter upon or work on private property in areas not encumbered with public easements without the permission of the property owner, except in accordance with 77 USCA § 541(a)(2).

- P. Repair of Streets and Property. Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly repaired by the Operator, at its expense, to a condition as good as that prevailing prior to the Operator's construction And in a manner consistent with the provisions of the excavation ordinance of the City.

Q. Undergrounding of Cable.

1. Cable shall be installed underground at the Operator's expense where both the existing telephone and electrical utilities are already underground. The Operator shall place cable underground in newly platted areas within sixty (60) days of installation of all utilities (water, sewer, telephone and electrical), unless this requirement is waived by the City.

2. In the event an underground installation is required and the ground is frozen, saturated, or otherwise unable to immediately facilitate underground installation, such installation may be performed on a temporary basis in compliance with all state and federal rules, regulations, codes, or other generally applicable standards. As soon as conditions change to permit proper underground installation of the cable, the Operator shall immediately, and in no event later than thirty (30) days after such conditions have changed to allow underground installation, undertake all necessary steps to install the cable underground pursuant to the terms and conditions of this Ordinance.

R. Reservation of Street Rights.

1. Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
2. All such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of the Operator.
3. If any such property of the Operator shall interfere with the construction or relocation, maintenance or repair of any street or public improvement, whether it be construction, repair, maintenance, removal or relocation of a sewer, public sidewalk, water main, street, or any other public improvement, thirty (30) days' notice shall be given to the Operator by the City, and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by the Operator so that the same shall not interfere with the said public work of the City, as determined by the City, and such expense for removal or replacement shall be borne by the City only if the City bears the expense of relocating equipment of any utility using said property.
4. Nothing contained in this Ordinance shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid

injuring the Operator's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water System.

- S. Trimming of Trees. The Operator shall have the authority to trim trees upon and hanging over streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Operator. Operator shall be solely responsible for its actions pursuant to this section.
- T. Vacation of Streets and Abandoned Facilities. If the City vacates a right-of-way that contains the facilities of the Operator, and the right-of-way vacation does not require the relocation of the Operator's facilities, the City shall, except when it would not be in the public interest, reserve to and for itself and all right-of-way users having facilities in the vacated right-of-way, the right to install, maintain and operate any facilities in the vacated right-of-way, and to enter upon the right-of-way at any time to reconstruct, inspect, maintain, or repair the facilities.

If the City vacates a right-of-way that contains the facilities of the Operator, and the right-of-way vacation requires the relocation of Operator's facilities, payment of the relocation costs must be determined as follows: (1) if vacation proceedings are initiated by the Operator, the Operator must pay the relocation costs; (2) if the vacation proceedings are initiated by the City for a public project, the Operator must pay the relocation costs, unless otherwise agrees to by the City and the Operator; or (3) if the vacation proceedings are initiated for the purpose of benefitting a person other than the Operator, the benefitted person must pay the relocation costs.

Operator shall notify the local government unit when facilities are to be abandoned. The Operator shall remove them from the right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the City.

- U. Movement of Facilities. In the event it is necessary temporarily to move or remove any of the Operator's wires, cables, poles, or other facilities placed pursuant to this Ordinance, in order to lawfully move a large object, vehicle, building or other structure over the

streets of the City, upon two (2) weeks notice by the City to the Operator, the Operator shall, at the expense of the person requesting the temporary removal of such facilities, comply with City's request. Any service disruption provisions of this Ordinance shall not apply in the event that the removal of the Operator's wires, cables, poles or other facilities results in temporary service disruptions.

V. Enlargement of Franchise Area.

1. In the event any new territory shall become annexed to the City, such new territory shall become, by operation of law, a part of said franchise area immediately upon the date such annexation becomes final, and said franchise area shall thereafter be deemed enlarged to include the addition of such new territory.
2. The Operator shall make Cable Service available to any new territory within a reasonable time, as determined by the City after the annexation thereof becomes final.

Section 14-0407. SERVICE PROVISIONS.

A. Franchises to Operate Cable Communications Systems in the City.

1. No Operator shall offer Cable Service to Subscribers by means of a Cable Television System within the City unless it holds a franchise granted by ordinance authorizing such a System within the City and in, under, and over the streets, highways, and other public grounds of the City, as provided in this Article.
2. Any Operator holding a franchise shall provide Cable Service to all residents within the city limits where a density equivalent of 80 or more residential dwelling units per cable mile exists.
3. Except upon approval of the City Commission, all franchises or renewal of franchises granted by ordinance pursuant to this section shall be non-exclusive; the City Commission reserves the right to issue as many such franchises as it deems advisable in the public interest, and shall not unreasonably refuse to award an additional competitive franchise.

4. Any franchise granted pursuant to this Ordinance shall not authorize an additional Operator to operate within the franchise area of an existing Operator on terms or conditions more favorable or less burdensome to such new Operator than those applied to any existing Operator.
5. The term of each franchise shall be for a period of no more than fifteen (15) years, the effective date to be pursuant to any franchise granted hereunder, with the right of renewal, consistent with state and federal law (in particular, Section 626 of the Cable Act), at the option of the City Commission, for a term of no more than fifteen (15) years. To the extent Section 626 of the Cable Act is no longer applicable to franchise renewals, the City and Operator shall conduct the franchise renewal process pursuant to the terms and provisions of Section 626 of the Cable Act as it existed at the time the franchise was granted or last renewed.

Source: Ord. 1038, Sec. 3 (2015)

- B. Applications for Franchise. All applications to construct, operate or maintain any cable television System in the City or to traverse any portion of the City for transmitting or conveying of such service elsewhere, shall be filed with the City Auditor, and each such application shall be set forth, contain, or be accompanied by the following:
 1. The name, address and telephone number of the applicant.
 2. A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following:
 - a. The names, residence addresses and business addresses of all officers, directors and associates of the applicant.
 - b. The names, residence addresses and business addresses of all persons and entities having, controlling, or being entitled to have or control five percent or more of the ownership of the applicant, and the respective ownership share of each such person or entity.
 - c. The names and addresses of any parent or subsidiary of the applicant and of any other business entity owning or controlling in whole

or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including, but not limited to, all Cable Systems or similar Systems owned or controlled by the applicant, its parent or subsidiary and the areas served thereby.

- d. A detailed description of all previous experience of the applicant in providing Cable Service or related or similar services.
 - e. A detailed and complete financial statement of the applicant, prepared by a certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the City, setting forth the basis for a study performed by such lending institution or funding source, and its clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed System in the City, or a statement from a certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed System in the City.
 - f. A statement identifying, by place and date, any other cable television franchise(s) awarded to the applicant, its parent or subsidiary; the status of said franchise(s) with respect to completion thereof; the total cost of completion of such System(s); and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof.
3. A detailed description of the proposed plan of operation of the applicant, which shall include, but not be limited to, the following:
- a. A detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to

become operational throughout the entire area to be served.

- b. A statement or schedule setting forth all proposed classifications of rates and charges to be made against Subscribers and all rates and charges as to each of any said classifications, including installation charges, service charges, and special, extraordinary, or other charges. The purchase price, terms, and nature of any optional or required equipment, device, or other item to be offered for sale to any Subscriber shall be described and explained in detail.
 - c. A detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant. In no event shall said operational and performance standards be less than those contained in Title 47, Subpart K (Sections 76.601 et seq.) Rules and Regulations, Federal Communications Commission, as the same may be amended from time to time.
- 4. A copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and any Subscriber.
 - 5. A copy of any agreement covering the franchise area, if existing, between the applicant and any public utility providing for the use of any facilities of any public utility, including, but not limited to, poles, lines, or conduits.
 - 6. Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the City.
 - 7. The application fee in a sum established by the City which shall be in the form of cash, certified or cashier's check, or money order, to pay the costs of studying, investigating, and otherwise processing such application, and which shall be in consideration thereof and not returnable or refundable in whole or in part; provided that any applicant who shall deliver to the City Auditor a written withdrawal of or cancellation of any application hereunder, not later than the seventh day next following the day such application is

received by the City Auditor, shall be entitled to have returned and refunded an applicable portion of the application fee.

C. Application Procedure.

1. The City may, by advertisement or any other means, solicit and call for applications for Cable System franchises, and may determine and fix any date upon or after which the same shall be received by the City or the date before which the same must be received, or the date after which the same shall not be received, and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making and receiving of such offers and applications; provided, that the City shall not be required to solicit or call for such offers or applications and may receive or refuse to receive any of the same, solicited, called for, or otherwise, as the City may elect.
2. Upon receipt of any application for a franchise, the City Auditor or such individual or committee as may be designated by the City, shall cause such application to be investigated, shall prepare a report of such investigation, shall make recommendations respecting such application, and shall cause said report and recommendations to be placed upon the agenda of the regular session of the City next following the completion thereof, or as otherwise directed by the City. A copy of such report and recommendations and notice of the date it will be presented to the City shall be mailed to the applicant at the address listed in the application. Any existing Operator may provide the City a written request to receive a copy of said report and City shall provide a copy of said report as soon as reasonably possible.
3. The City shall receive such report and recommendations of the City Auditor or such individual or committee as may be designated by the City; shall consider the same together with such application; and shall make its determination either that such application should be accepted upon such terms and conditions as the City shall determine, and as herein provided, or that such application should be rejected. In making any determination hereunder as to any application, the City shall give due consideration to the quality of the service proposed; rates to Subscribers; income

to the City; experience, character background, and financial responsibility of the applicant and its management and owners; the technical and performance quality of the equipment to be used; the willingness and ability of the applicant to meet construction and physical requirements, policy conditions, permit limitations, and requirements imposed by this article or pursuant hereto; and any other considerations deemed pertinent by the City for safeguarding the interest of the City and the public. The City may determine that the award of any franchise shall be made on the basis of such considerations with or without competitive bidding, or otherwise in its discretion.

4. If the City shall determine that such application should be rejected, such determination shall be final and conclusive, and the same shall be deemed rejected. If the City shall determine such application should be accepted, the following shall be done and caused to be done:
 - a. The City shall decide and specify the terms and conditions of any franchise to be granted hereunder and as herein provided.
 - b. The City shall pass its resolution of intention to grant such franchise, stating the name of the proposed operator, the character of franchise, the terms and conditions upon which such franchise is proposed to be granted, fixing and setting forth the date, hour and place certain when and where any persons having any interest therein or objection to the granting thereof may appear before the City and be heard, and directing the City Auditor to publish said resolution at least once, within fifteen days of the passage thereof; such publication shall also specify a time and date for a hearing on said resolution. Such hearing shall be not less than ten days nor more than thirty days after the date of publication.
5. At the time set for such hearing, or at any adjournment thereof, the City shall proceed to hearing and pass upon all protests, and its decision thereon shall be final and conclusive. Thereafter, the City shall make one of the following determinations:
 - a. That such franchise be denied; or,

- b. That such franchise be granted upon the terms and conditions as specified in the resolution of intention to grant the same; or,
 - c. That such franchise be granted, but upon the terms and conditions different from those specified in the resolution of intention to grant the same.
6. If the City shall determine that such franchise be denied, such determination shall be by resolution and shall be final and conclusive. If the City shall determine that such franchise be granted, such determination shall be by ordinance, granting such franchise upon such terms and conditions as specified therein.

D. Acceptance of Franchise.

- 1. No franchise granted hereunder shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the City Auditor; and such written acceptance shall be in form and substance as shall be prescribed and approved by the City Attorney and shall be and operate as an acceptance of each and every term and condition and limitation contained in this article, in such franchise, or otherwise specified.
- 2. Such written acceptance shall be filed by Operator no later than 11:59 p.m. of the 120th day next following the City approving the Franchise Agreement, and in default of the filing of such written acceptance as herein required, Operator shall be deemed to have rejected and repudiated the same; and thereafter, the acceptance of any such Operator shall not be received nor filed by the City Auditor, and such Operator shall have no rights, remedies or redress in the premises unless and until the City shall determine that such acceptance be received or filed, and then upon such terms and conditions as the City may impose.

E. Programming. The Operator shall initially provide programming, consisting of the services identified in its Franchise Agreement. If an Operator provides a premium channel without charge to Subscribers who do not subscribe to such premium channel, the Operator shall endeavor to provide reasonable advance notice to all such Subscribers.

- F. Programming Decisions. All programming decisions shall be at the sole discretion of the Operator; provided, however, the City reserves all of its rights pursuant to Section 625 of the Cable Act regarding any change in the mix, quality, or level of service and any other rights pursuant to Section 625 of the Cable Act.
- G. Emergency Alert System. The Operator shall install and thereafter maintain for use by the City an Emergency Alert System (EAS). The EAS system will operate pursuant to standards set forth by the FCC EAS rules and regulations.
- H. Access Channels. The Operator shall:
 - 1. Upon request of the City, provide up to two (2) dedicated channels, without charge, for public, educational and governmental use, and shall provide, without charge, such studio facilities, equipment and technical services as specified in any franchise granted pursuant to this Ordinance, necessary for the effective use of such channels.
 - 2. Be subject to rules governing the use of any access channels to be enacted by the City and approved by the Operator as required by Section 611(d) of the Cable Act. Such rules shall provide, inter alia, a mechanism for adjustment of the total number of access channels provided or pursuant to subsection H(1) after consideration of subscriber preferences and the legitimate needs of access users. In no event, however, shall the total number of access channels required by any operator be more than three (3).
 - 3. Not charge for channel time or playback of pre-recorded programming of one hour or less on the specially designated channels referenced in this Section 14-0406. Charges for playback of pre-recorded programs of more than one hour shall not exceed an operator's direct labor costs.

Section 14-0408. OPERATION AND REPORTING PROVISIONS.

- A. Open Books and Records. The City shall have the right to inspect, upon twenty-four (24) hours written notice, at any time during normal business hours at the Operator's local office all books, records, maps, plans, financial statements, Service complaint logs, performance test results, record of requests for service and other like materials of the Operator maintained locally which are reasonably necessary to monitor compliance with the terms of this Ordinance.

- B. Communications with Regulatory Agencies. Copies of all petitions, applications, communications and reports submitted by the Operator or on behalf of or relating to the Operator to the FCC or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters affecting the System authorized pursuant to this Ordinance shall also, upon request, be provided to the City. Copies of responses from the regulatory agencies to the Operator shall, upon request, likewise be provided to the City within fifteen (15) days of receipt of the response.
- C. Annual Report. On or before April 1 of each year, the Operator shall, upon request, file with the City a copy of any of the following reports regarding the System:
1. A description of the Basic Service then being offered at the end of the fiscal year together with a description of any changes made in the Basic Service during the reported year.
 2. A compilation setting forth the results of any Subscriber survey.
 3. A current copy of the Subscriber service information required in accordance with Section 14-0408H of this Ordinance.
 4. A current list of names and addresses of each principal. For the purposes of this requirement the term "principal" means any person, firm, corporation, partnership or joint venture, or other entity who or which owns or controls five percent (5%) or more of the voting stock (or any equivalent interest of a partnership or joint venture of the Operator).
 5. A compilation summarizing the complaints received during the reported year, by category, and a discussion of any unresolved complaints.
 6. A description of how pay-per-view programming is made available.
 7. Reasons why certain areas within the City are not served and plans to extend Cable Service to these areas.
- D. Additional Reports. The Operator shall prepare and furnish to the City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property, which are

reasonably necessary for the administration and enforcement of this Ordinance.

- E. Maps. The Operator shall provide City, upon request, a current map or set of maps drawn to scale showing: the System and all equipment installed or in place in streets and other public places, the areas where the Operator's Cable System is now available to Subscribers, and the areas where the System is not available.
- F. Audit. The City and its agents and representatives shall have the authority, during normal business hours, to arrange for and conduct an audit of the books and records of the Operator and its equipment for the purpose of checking compliance with the franchise fee calculations. The Operator shall first be given seven (7) days advance written notice of the audit request, a description of and purpose for the audit and description, to the best of the City's ability, of the books, records, documents and equipment it wishes to inspect. The Operator shall have the right to make its applicable books and records available at its headquarters or its local office in the Fargo area, to the extent necessary, but shall be solely responsible for all costs and expenses necessary for a City representative to travel to said headquarters for the conduct of an audit.
- G. Periodic Evaluation and Renegotiation Sessions. The City recognizes that the field of cable communications is a relatively new and rapidly changing industry which may undergo many regulatory, technical, financial, marketing and legal changes over the next decade. Therefore, in order to provide for a maximum degree of flexibility in this Ordinance, and to help achieve a continued advanced and modern System, the following evaluation provisions will apply:
 - 1. The City may require, at its sole discretion, evaluation sessions at any time during the term of this Ordinance; provided, however, there shall not be more than one evaluation session during any twelve (12) month period.
 - 2. Topics which may be discussed at any evaluation and session include, but are not limited to rates, channel capacity, System performance, programming, access, municipal uses of cable, Subscriber complaints, judicial rulings, FCC rulings, franchise fee adjustment in light of competition utilizing right of way at a lesser fee and any other topics the City or the Operator deem relevant.

3. During an evaluation session, the Operator shall fully cooperate with the City and shall provide without cost such information and documents as the City may reasonably request to perform the evaluation.
4. If at any time during its evaluation, the City determines that reasonable evidence exists of inadequate System performance, the City may require the Operator to perform tests and analysis directed toward such suspected inadequacies at the Operator's expense. The Operator shall fully cooperate with the City in performing such testing and any report prepared by the Operator shall include at least:
 - a. A description of the problem which precipitated the special tests.
 - b. The System component tested.
 - c. The equipment used and procedures employed in testing.
 - d. The method, if any, by which the problem was resolved.
 - e. Any other information pertinent to said tests and analysis which may be required by the City, or determined when the test is performed.
5. If after receiving the Operator's report the City determines that reasonable evidence still exists of inadequate System performance, the City may enlist an independent engineer, to perform tests and analysis directed toward such suspected inadequacies. The City will work with the Operator to select an independent engineer acceptable to both parties. If the engineer determines that System is performing inadequately, the Operator shall bear all costs and expenses associated with the services of the engineer. If the engineer determines that the System is performing adequately, the City shall bear all costs and expenses associated with the services of the engineer.
6. As a result of an evaluation and renegotiation session, the City and the Operator may determine that changes in the terms and provision of a franchisee may be required, that the System,

Ordinance requirements, or franchise should be updated, changed, revised, or that additional services should be provided. If the changes are consistent with the terms of this Ordinance and the needs of the City and implementation of such changes would not unreasonably add to the cost of providing Cable Service, the Operator and the City will, in good faith, negotiate the terms of any changes to which the parties agree.

Section 14-0409. CONSUMER PROTECTION PROVISIONS.

- A. Approval of Changes. The initial rates and charges for programming services shall be set forth within each franchise granted. The City reserves the right to regulate rates for Basic Service and any other services offered over the System, pursuant to federal or state law. The Operator shall maintain on file with the City at all times a current schedule of all rates and charges. The Operator shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission at 47 C.F.R., Part 76, Subpart N. The City shall follow all applicable rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76, Subpart N.
- B. Notification. Not less than thirty (30) days prior to the effective date of any change in any fee, charge, deposit, term or condition set forth in a franchise or permit (or such shorter period as may, upon a showing of good cause, be approved by the City), the Operator shall (i) submit a revised schedule of rates and charges to the City, and (ii) provide notice of the proposed change to each affected Subscriber. The Operator shall provide written notice to affected Subscribers prior to the imposition of a rate or fee change. The Operator shall not make any change in any rate unless it has provided the notice required in this Section.
- C. Consumer Protection and Customer Service. The City expressly reserves the right to enforce FCC rules and regulations promulgated pursuant to Section 632 of the Cable Act or any other applicable section of the Cable Act. The City also reserves the right to establish and enforce any law or regulation concerning customer service that may impose requirements exceeding standards set by the FCC pursuant to applicable sections of the Cable Act, or which would address matters not addressed by the standards set by the FCC pursuant to the Cable Act.

- D. Charges for Disconnection or Downgrading of Service.
1. The Operator may impose a charge reasonably related to the cost incurred for a downgrade of service, except that no separate charge may be imposed when:
 - a. A Subscriber requests total disconnection from the System; or
 - b. A Subscriber requests the downgrade within a thirty (30) day period following any rate increase relative to the service in question.
 2. If a Subscriber requests disconnection from Cable Service prior to the effective date of an increase in rates, the Subscriber shall not be charged the increased rate if the Operator fails to disconnect Cable Service prior to the effective date. Any Subscriber who has paid in advance for the next billing period and who requests disconnection from Cable Service shall receive a prorated refund of any amounts paid in advance.
- E. Preferential Treatment Prohibited. The Operator shall not, as to rates, charges, service, service facilities, repairs, maintenance, rules, regulations, or in any other respect, make or grant undue preference or advantage to any person or business, nor subject any person or business to any prejudice or disfavor. This section shall not preclude the Operator from establishing and implementing bulk Subscriber rates or discounts or rate classifications based upon reasonable criteria.
- F. Subscriber Complaint Practices. (Source: Ord. 1038, Sec. 4 [2015])
1. The Operator shall have a publicly-listed toll-free telephone number and be so operated as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis. At a minimum, the Operator shall endeavor to connect a telephone caller to a live service representative within thirty (30) seconds, seven (7) days per week, at least during the hours of 7:00 a.m. to 11:00 p.m. The Operator shall maintain written or computer-generated records demonstrating, to the satisfaction of the City, its ability to meet these standards. A written or computer-generated log available for City inspection shall be maintained listing all complaints and their dispositions.
 2. The Operator shall render efficient service, make repairs promptly and interrupt service only for

good cause and for the shortest time possible. Such interruptions, insofar as possible, shall occur during periods of minimum use of the System. A written log available for City inspection shall be maintained for all service interruptions.

3. Subscriber requests for maintenance or repairs received prior to 2:00 p.m., Monday through Friday, shall, whenever possible, be performed the same day.
 4. Subscriber requests for maintenance or repairs received after 2:00 p.m., Monday through Friday, shall, whenever possible be performed within twenty-four (24) hours of the request, but not later than the next business day.
 5. Subscriber requests for repairs received on Saturdays or Sundays shall, whenever possible, be performed within twenty-four (24) hours of the request, but not later than the next business day.
 6. The Operator shall respond within two (2) hours to all outage reports affecting at least one (1) channel for five percent (5%) or more of the System's Subscribers.
 7. If the Operator fails to correct a System outage (i.e. 10% or more of the channels provided to a Subscriber are not able to be received) problem within twenty-four (24) hours, the Operator shall, upon request from a Subscriber, credit one thirtieth (1/30) of the monthly charge to the Subscriber for each twenty-four (24) hours or fraction thereof after the first twenty-four (24) hours during which a Subscriber is with reduced service.
 8. All money owed to a Subscriber, or potential Subscriber, shall be refunded within twenty (20) working days of the Operator's knowledge of the obligation. Credit may be issued to the Subscriber's account by mutual agreement.
 9. The Operator shall provide the City with the name of its chief management employee for the referral of complaints made to the City.
- G. Installation. Subscribers who request installation or repairs shall be given the schedule option of morning, afternoon or evening appointments. Persons requesting installation of Cable Service shall be afforded a right

of rescission between the time Cable Service is requested and the time Cable Service is actually installed. When possible, all new installations, reconnects, service upgrades or downgrades shall be performed within seven (7) working days of the date the order was placed by the Subscriber.

H. Subscriber Information. Upon installation, the Operator shall provide to all Subscribers (and Operator shall initially provide to the City) written Subscriber service information which shall include, but not be limited to, the following:

1. The procedure for investigation and resolution of Subscriber service complaints, including the telephone number and contact person at the City who may assist in the resolution of complaints;
2. Programming services, rates, and charges for all services, including public access related charges;
3. Billing practices as required by Section 14-0409I;
4. Service termination procedures;
5. Change in service procedures;
6. Refund policy;
7. Office hours; and
8. Converter/VCR hookup information and use instructions. Operator will, within a reasonable period of time, notify all Subscribers and the City of any material changes in the above-referenced Subscriber service information.

I. Subscriber Billing Practices.

1. The Operator shall notify each of its Subscribers, through the written service information, of its billing practices. The service information shall describe the Operator's billing practices including, but not limited to, the following: frequency of billing, time periods upon which billing is based, advance billing practices, security deposit requirements, charges for late payments or returned checks, payments necessary to avoid account delinquency, availability of credits for service outages, procedures to be followed to request service deletions including the notice period a Subscriber must give to avoid liability

for such services and procedures to be followed in the event of a billing dispute.

2. The Operator shall notify all affected Subscribers not less than thirty (30) days prior to any change in the billing practices and such notice shall include a description of the changed practice.
3. The Subscriber bill shall contain the following information presented in plain language and format:
 - a. Name and address of the Operator;
 - b. The period of time over which each chargeable service is billed including prorated periods as a result of the establishment and termination of Cable Service;
 - c. Each rate or charge levied;
 - d. The amount of the bill for the current billing period, separate from any balance;
 - e. The Operator's telephone number.
 - f. The date on which payment is due from the Subscriber.
- J. Parental Control Option. The Operator shall, for a lawful fee, furnish parental control devices to all Subscribers who wish to be able to black out any objectionable programming from the Cable Service entering the Subscriber's home.
- K. Periodic Subscriber Survey. Operator will notify City of Subscriber surveys being conducted and shall allow the City, upon request, the opportunity to review all survey results at the office of the Operator.

Section 14-0410. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

A. Payment to City. (Source: Ord. 1038, Sec. 5 [2015])

1. The Operator shall pay to the City, an annual amount not to exceed five percent (5%) of its Gross Revenues. The foregoing payment shall be compensation for use of streets and other public property, as well as payment for the right to operate a Cable Television System in the City. The exact fee shall be set forth in the franchise agreement.

2. Payments due the City under this provision shall be known as "franchise fees," shall be computed monthly and shall be paid on or before the thirtieth calendar day following the last day of the previous month to the City during regular business hours. Each payment shall be accompanied by a brief report showing the basis for the computation and such other relevant facts as may be required by the City.
 3. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Ordinance, or for the performance of any other obligation hereunder. All amounts paid shall be subject to audit and recomputation by the City.
 4. On or before April 1st of each year, the Operator shall provide the City with a certification of the Gross Revenues for the preceding year prepared by an independent certified public accountant in accordance with generally accepted auditing standards, and that fairly and accurately presents the gross revenues of the Operator for the year. The calculation of the fee shall be clearly shown as part of this certification in a form approved by the City. This certification shall be used to determine the exact amount of payments due the City and to correct any overpayments or underpayments by the Operator.
 5. All payments to the City shall be by check, made payable to the City of West Fargo, and delivered or sent by mail to the City Auditor, or by electronic means, if available.
 6. In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the annual rate of 12%, or the maximum rate permitted under North Dakota law, but in no event greater than 12%.
- B. Future Costs. The Operator shall pay to the City an amount, not to exceed ten thousand dollars (\$10,000.00), equal to the reasonable costs and expenses which the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any transfer, as more clearly referenced in Section 14-0412B hereof, of any franchise granted

pursuant to this Ordinance at such time and in such manner as the City shall specify. Payments of such costs and expenses shall not be deemed to be "franchise fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be (i) "payments-in-kind" or any involuntary payments chargeable against the compensation to be paid to the City by the Operator pursuant to Section 14-0410A hereof, or (ii) part of the compensation to be paid to the City by the Operator pursuant to Section 14-0410A hereof.

C. Not Franchise Fees.

1. The Operator expressly acknowledges and agrees that except for the payments expressly required by Section 14-0410A hereof, none of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided or performed by the Operator at the direction of the City or otherwise pursuant to this ordinance, or otherwise in connection with the construction, operation, maintenance, or upgrade of the System (including specifically, but not by way of limitation, such payments, contributions, services, equipment, facilities, support, resources, or other activities as described in or provided for in this Ordinance and the exhibits hereto) are franchise fees chargeable against the compensation payments to be paid to the City by the Operator pursuant to Section 14-0410A hereof.
2. The Operator expressly acknowledges and agrees that, as applicable, except for the compensation payments expressly required by Section 14-0410A hereof, each of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided by the Operator, are within the exclusions from the term "franchise fee" set forth in Section 622(g) (2) of the Cable Act (47 U.S.C. §§ 542(g) (2)).
3. The Operator expressly acknowledges and agrees that the compensation payments due from the Operator to the City pursuant to Section 14-0410A hereof, shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources, or other activities to be paid or supplied by the Operator pursuant to this Ordinance and the compensation and other payments to be made pursuant to this Section 14-0410A of this Ordinance shall not be deemed to be in the

nature of a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which the Operator shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Operator.

4. The Operator shall not have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made pursuant to this Ordinance from or against any city or other governmental taxes of general applicability or other fees or charges, including permit fees for excavation, which the Operator is required to pay to the City or other governmental agencies.
5. The Operator shall not apply or seek to apply all or any part of the amount of the compensation or other payments to be made pursuant to this Ordinance as a deduction or other credit from or against any city or other government taxes of general applicability which shall be deemed to be separate and distinct obligations of the Operator.
6. The Operator shall not apply or seek to apply all or any part of the amount of any city or other governmental taxes or other fees or charge, including permit fees for excavation, of general applicability as a deduction or other credit from or against any of the compensation or other payments to be made pursuant to this Ordinance, each of which shall be deemed to be separate and distinct obligations of the Operator.
7. In the event the Operator applies or seeks to apply all or any part of the amount of said compensation payments as a deduction or other credit from or against such city or other governmental taxes of general applicability or other fees or charges, or in the event that the Operator applies or seeks to apply all or any part of the amount of such taxes or other fees or charges as a deduction or other credit from or against said compensation obligations, the City may terminate Operator's franchise for cause due to a material breach, pursuant to Section 14-0410K hereof, without any liability or compensation to the Operator.

D. Performance Bond.

1. The City may, in its sole reasonable discretion, require an Operator to furnish and file with the City a performance bond to ensure the faithful performance by Operator of all construction requirements contained in this Ordinance and any franchise granted hereunder. The bond shall run to the City in the penal sum of at least One Hundred Thousand and 00/100 Dollars (\$100,000.00). The rights reserved to the City with respect to the bond are in addition to all other rights the City may have under the Ordinance or any other law. The company providing such bond must be licensed to do business in the State of North Dakota.
2. Following the completion of any construction as determined by the City in accordance with Section 14-0406C hereof, the requirement to maintain said bond referred to above shall be eliminated.
3. The bond shall be subject to the approval of the City and shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be canceled without the consent of the City until sixty (60) days after receipt by the City by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew.

E. Security Fund. (Source: Ord. 1038, Sec. 6 [2015])

1. Within thirty (30) days after the effective date of the franchise agreement, Operator shall, upon request, establish a "security fund" by establishing with a financial institution, approved by the City, a letter of credit, escrow account or similar security in the amount of Five Thousand (\$5,000.00) Dollars. Any written instrument evidencing the security fund shall be subject to the approval of the City.
2. In the event the Operator fails to perform any material obligation under the Ordinance or any franchise granted hereunder, the City shall provide thirty (30) days written notice to the Operator of such failure. If, after such thirty (30) days the failure remains uncured, and the City has been compelled to pay any damages, costs or expenses, or

has not received a payment from the Operator as required by this ordinance, the City shall provide written notice of the amount of such payment to the Operator. If within ten (10) days after Operator's receipt of written notice of such payment, the Operator fails to reimburse the City, then the City may withdraw the amount of such payment from the security fund.

3. Within ten (10) days after such withdrawal, the City shall provide Operator with written notice of the date and amount of such withdrawal. Within ten (10) days from receipt of such notice that any amount has been withdrawn, the Operator shall deposit a sum of money sufficient to restore such security fund to the required amount.
4. At a minimum, the letter of credit or escrow account shall (1) provide that it shall not be canceled without the prior written consent of the City and (2) not require the consent of Operator prior to the collection by the City of any amounts covered by the said security fund. The security fund shall be maintained, at Operator's sole expense, through the term of the franchise.
5. Interest on the amount in the security fund shall accrue to the benefit of the Operator and may be withdrawn by Operator.
6. The City reserves the right, in its sole discretion, to reduce the required amount of the security fund. Upon any termination of the franchise, Operator shall be entitled to the return of the security fund, or portion thereof as remains on deposit at such termination. In the event Operator continues to operate the System following any termination, then Operator shall not be entitled to a return of the security fund until the end of such continued operation.

F. Damages and Defense.

1. As between the City and the Operator, the Operator shall be responsible for any liability of the City, including, without limitation, any officer, employee, or agent of the City, arising out of or in connection with the construction, operation, maintenance, repair, upgrade or removal of the System by the Operator or its subcontractors, or the distribution of any service over the System. The Operator shall, at its own cost and expense,

replace, repair, or restore any damaged property to its prior condition and shall pay appropriate compensation in the event of any wrongful injury to or death of any individual person occasioned by any negligent act or failure to act of the Operator, or any officer, employee, agent, or subcontractor thereof, in connection with the construction, operation, maintenance, repair, upgrade or removal of the System.

2. The City, its officers, employees, agents, attorneys, consultants and independent contractors, shall not be liable for any liability of the Operator, or any other person, arising out of or in connection with the construction, operation, maintenance, repair, upgrade or removal of, or other action or event with respect to, the System, or the distribution of any service over the System.
3. The City may, at any time, in case of fire, disaster, or other emergency, as determined by the City, in its sole discretion, cut or move any of the wires, cables, amplifiers, appliances, or other parts of the System, in which event the City shall not incur any liability to the Operator or any other person. When possible, the Operator shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself. All costs to repair or replace such wires, cables, amplifiers, appliances, or other parts of the System shall be borne by the Operator unless state law provides otherwise.
4. The City, its officers, employees, agents, attorneys, consultants and independent contractors shall have no liability to the Operator or any other person for any special, incidental, consequential, punitive, or other damages as a result of the lawful exercise of any right of the City pursuant to this Ordinance, or any franchise granted pursuant to this Ordinance or applicable law, including the rights of the City to grant, terminate, amend, or otherwise modify all or any part of this Ordinance, or any franchise granted pursuant to this Ordinance.
5. The Operator shall:
 - a. Defend, indemnify, and hold harmless the City, its officers, employees, agents, attorneys, consultants and independent contractors from and against all liabilities, special,

incidental, consequential, punitive, and all other damage, cost, and expense (including reasonable attorneys' fees) arising out of or in connection with any and all negligent acts of the Operator in:

- (1) The award or renewal of a franchise;
 - (2) The construction, operation, maintenance, repair, upgrade or removal of the System;
or
 - (3) The distribution of any service over the System.
 - b. Cooperate with the City, by providing nonfinancial assistance in connection with any claim arising out of or in connection with the adoption of this Ordinance or the granting of a franchise.
6. As between the City and the Operator, the foregoing liability and indemnity obligations of the Operator pursuant to this Section shall not apply to:
- a. Any willful misconduct or gross negligence of any city officer, employee, agent, attorney, consultant or independent contractor;
 - b. Any liability arising out of the distribution of services over the governmental channels to the extent that the Operator has not performed or failed to perform any act forming the basis of such claim;
 - c. Any liability arising out of the distribution of services over public channels to the extent that the Operator has not performed or failed to perform any other act forming the basis of such claim; or
 - d. Any liability arising out of the City's use of the Emergency Alert System.

G. Liability Insurance.

1. The Operator shall, at its own cost and expense, obtain a liability insurance policy or policies, together with evidence in the form of a certificate of insurance, demonstrating that the premiums for said policy or policies have been paid and evidencing that said policy or policies shall take effect and be furnished at or before the granting of a franchise. Such companies must carry a rating by Best of not less than "A." Such policy or

policies shall be issued by companies duly licensed to do business in the State of North Dakota. Such policy or policies shall insure the company and the City and its officers, boards, commissions, elected officials, agents, and employees (through appropriate endorsements if necessary) against each and every form of liability of the company referred to in Section 14-0410F hereof in the minimum combined amount of Two Million Dollars (\$2,000,000.00) for bodily injury and property damage. The foregoing minimum limitation shall not prohibit the Operator from obtaining a liability insurance policy or policies in excess of such limitations, provided that the City, its officers, boards, commissions, elected officials, agents, and employees shall be named as additional insureds to the full extent of any limitation contained in any such policy or policies obtained by the Operator.

2. The liability insurance policies required by this Section shall be maintained by the Operator throughout the term of any franchise and such other period of time during which the Operator operates or is engaged in the removal of the System. Each such liability insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until sixty (60) days after receipt by the City, by registered mail, of a written notice of such intent to cancel or not to renew."

Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Operator shall obtain and furnish to the City, replacement insurance policies.

3. The legal liability of the Operator to the City and any person for any of the matters which are the subject of the liability insurance policies required by this Section, including, without limitation, the Operator's indemnification obligation set forth in Section 14-0410F hereof, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by the Operator.

H. Limitation of Liability.

1. In any court proceeding involving any claim against the City or any official, member, employee, or agent of the City, arising from the regulation of Cable Service or from a decision of approval or disapproval with respect to a grant, renewal, transfer or amendment of a permit, any relief, to the extent such relief is required by any other provision of federal, state, or local law, shall be limited to injunctive relief and declaratory relief.
2. The limitation contained in paragraph 1 above shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of an Operator's rights.
3. Nothing in this section shall be construed as limiting the relief authorized with respect to any claim against the City or any official, member, employee, or agent of the City, to the extent such claim involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.
4. Nothing in this section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to Cable Service or the granting of a franchise by the City, or any official, member, employee, or agent of the City.

I. City's Right to Revoke. In addition to all other rights which the city has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel any franchise granted pursuant to this Ordinance, and all rights and privileges pertaining thereto, in the event that, through willful failure, refusal or neglect:

1. The Operator substantially violates any material provision of this Ordinance; or
2. The Operator attempts to evade any of the material provisions of the Ordinance and refuses to cure it; or
3. The Operator is found guilty of practicing any material fraud or deceit upon the City or any Subscriber; or

4. The Operator becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt; or
 5. The Operator knowingly misrepresents a material fact in the application for or negotiation of, or renegotiation of, or renewal of, any franchise granted pursuant to this Ordinance.
- J. Enforcement of Franchise Provisions. In addition to any other remedies provided herein, the City may require Operator to appear before the City to address any alleged violations of the terms and conditions of this Ordinance, or any franchise granted hereunder. The City shall provide Operator thirty (30) days advance written notice of such a meeting, which notice shall include a detailed description of any alleged violation. Operator shall be prepared to explain the circumstances regarding such alleged violation, including any actions taken by Operator to cure such alleged violations or other relevant facts. If City is dissatisfied with the responses received from Operator, it may exercise any other rights available to it under the terms and provisions of this Ordinance, any franchise granted hereunder, or applicable local, state and federal law.
- K. Revocation Procedures. In the event that the City determines that the Operator has violated any material provision of the Ordinance, or any franchise granted pursuant to this Ordinance, the City may make a written demand on the Operator that it remedy such violation and that continued violation may be cause for revocation of said Operator's franchise. If the violation, breach, failure, refusal, or neglect is not remedied or commenced to be remedied to the reasonable satisfaction of the City within thirty (30) days following such demand, the City shall determine whether or not such violation, breach, failure, refusal or neglect by the Operator is due to acts of God or other causes which result from circumstances beyond the Operator's control.
1. A public hearing shall be held and the Operator shall be provided with an opportunity to be heard upon thirty (30) days written notice to the Operator of the time and the place of the hearing. The causes for pending revocation and the reasons alleged to constitute such cause shall be recited in the notice. Said notice shall affirmatively recite the causes that need to be shown by the City to support a revocation.
 2. If notice is given and, at the Operator's option, after a full public proceeding is held, the City

determines there is a material violation, breach, failure, refusal or neglect by the Operator, the City shall direct the Operator to correct or remedy the same within such reasonable additional time, in such manner and upon such reasonable terms and conditions as City may direct.

3. If after a public hearing it is determined that the Operator's performance of any of the terms, conditions, obligations of the franchise or this Ordinance, or any requirements of law, was prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided the Operator has notified City in writing within a reasonable period of time of its discovery of the occurrence of such an event and the realization of the event's impact on franchise performance. Such causes beyond the Operator's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God and civil emergencies.
4. If, after notice is given and, at the Operator's option, a full public proceeding is held, the City determines there was a material violation, breach, failure, refusal or neglect, then the City may declare, by resolution, the franchise revoked and canceled and of no further force and effect unless there is compliance within such period as City may fix, such period not to be less than thirty (30) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.
5. The issue of revocation shall automatically be placed upon the City Commission agenda at the expiration of the time set by it for compliance. The City then may terminate the Operator's franchise forthwith upon finding that the Operator has failed to achieve compliance or may further extend the period, in its discretion.
6. If the City, after notice is given and, at the Operator's option, a full public proceeding is held and appeal is exhausted, declares the franchise breached, the parties may pursue their remedies pursuant to this Ordinance or any other remedy, legal or equitable.
7. Within one hundred eighty (180) days after the City declares an Operator's franchise terminated, and

regardless of the exercise of any right of the City hereunder, the Operator may sell, remove or (by means divesting Operator of all right, title, and interest) transfer the entire System of Operator, subject to the provisions of Section 14-0412B, and upon any such sale or transfer in addition to any of the rights hereunder or otherwise, City shall have a lien (next in order of preference to any liens or encumbrances existing of record on the date of such termination) against any and all proceeds thereof, and against the System of Operator, in the full amount of any loss, cost, expense or other financial detriment incurred by the City in the exercise of any right hereunder, or by reason of such termination.

8. In the event Operator shall fail or refuse to sell, remove or transfer the entire System of Operator, as hereinabove provided, and regardless of the exercise of any other right of City hereunder, then by operation of law, all of the properties, facilities, records, files, rights, privileges, powers, authorities and immunities of Operator, which are part of the System of Operator, shall become the property of the City, subject to any and all valid liens or encumbrances of record, and the System shall belong to the City; and Operator shall cause to be executed, acknowledged and delivered to the City, upon demand therefor, such instruments as the City Attorney shall prescribe and approve, evidencing or affecting the ownership or control of any of the same in the City.
9. In the event the System shall become the property of the City, as herein provided, then City may solicit and call for offers to purchase such System, by bid process; providing that City may, in the manner provided in Section 14-0407C hereof, solicit and call for offers and applications for a franchise, and may specify, as a term and condition thereof, that any such offer and application shall include the purchase of such System from City.
10. Nothing herein shall be construed to obligate or require City to exercise any right of City hereunder, and City shall at no time be obligated or required to undertake or assume the ownership or operation of any System, or to provide any services.

Section 14-0411. FORECLOSURE, RECEIVERSHIP AND ABANDONMENT.

- A. Foreclosure. Upon the foreclosure or other judicial sale of the System, the Operator shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Operator has taken place, and the provisions of this Ordinance governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.
- B. Receivership. The City shall have the right to cancel any franchise granted pursuant to this Ordinance subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Operator, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:
 - 1. Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,
 - 2. Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance.
- C. Abandonment. The Operator may not abandon any portion of the System without having first given three (3) months written notice to the City. The Operator may not abandon any portion of the System without compensating the City for reasonable, actual damages resulting from the abandonment.

Section 14-0412. REMOVAL, TRANSFER AND PURCHASE.

- A. Removal After Revocation, Expiration, or Non-Renewal.
 - 1. If an Operator's request for renewal is denied or at the expiration of the term for which any franchise is granted, or upon its revocation, as provided for in Section 14-0410K hereof, the City shall have the right to require the Operator to remove, at the Operator's expense, all or any

portion of the System from all streets and public property within the City. In so removing the System, the Operator shall refill and compact at its own expense, any excavation that shall be made and shall leave all streets, public property and private property in as good a condition as that prevailing prior to the Operator's removal of the System. In so removing the System, Operator shall use its best efforts not to affect, alter or disturb in any way electric, telephone or utility cables, wires or attachments. Operator shall be responsible for any damage which occurs during said removal. The City, or its designee, shall have the right to inspect and approve the condition of such streets and public property after removal. The security fund, insurance, indemnity and penalty provisions of the Ordinance shall remain in full force and effect during the entire term of removal.

2. If, in the sole discretion of the City, the Operator has failed to commence removal of the System, or such part thereof as was designated within thirty (30) days after written notice of the City's demand for removal is given, or if the Operator has failed to complete such removal within one (1) year after written notice of the City's demand for removal is given, the City shall have the right to exercise one of the following options:
 - a. Declare all right, title and interest to the System to be in the City or its designee with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it; or
 - b. Declare the System abandoned and cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the Operator.

B. Sale or Transfer. (Source: Ord. 1038, Sec. 7 [2015])

1. The right of an Operator under this Ordinance or any franchise granted pursuant to this Ordinance, shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without full

compliance with the procedure set forth in this Section.

2. The provisions of this Section shall apply to the sale or transfer of all or a majority of the Operator's assets, merger (excluding any parent or subsidiary corporation), consolidation, creation of a subsidiary corporation or sale or transfer of stock in the Operator so as to create a new controlling interest. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
 - a. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer. The written request shall include or be accompanied by all information required by the City or required in accordance with FCC rules and regulations.
 - b. The City shall reply in writing within thirty (30) days of the request and shall indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on the Operator's Subscribers.
 - c. If a public hearing is deemed necessary, such hearing shall be commenced within thirty (30) days of such determination and notice of any such hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the City.
 - d. Within thirty (30) days after the closing of the public hearing, the City shall approve or deny in writing the sale or transfer request.
 - e. Within thirty (30) days of any transfer, the Operator shall file with the City a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer of ownership or control or lease, certified and sworn to as correct by the Operator. The Operator may label documents proprietary and confidential when necessary and legally appropriate.

3. In reviewing a request for sale or transfer pursuant to this Section, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party, and the Operator shall assist the City in so inquiring. The City may condition said transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, the City shall not unreasonably withhold its approval. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signator to the franchise. In no event shall the City exceed 60 days in approving or denying an Operator's written request, or such request shall be deemed granted unless there is a mutual agreement for extension of time.

C. Purchase By City Upon Revocation or Non-Renewal.

1. Upon non-renewal of a franchise, the City may, in lawful manner and upon the payment of fair market value, determined on the basis of the System valued as a going concern but with no value allocated to the franchise itself, lawfully acquire the System or effect a transfer consistent with the provisions of this Ordinance.
2. Upon the revocation of a franchise for cause, the City may, in lawful manner and upon the payment of an equitable price, lawfully acquire the System or effect a transfer of ownership of System to another person.

Section 14-0413. RIGHTS OF INDIVIDUALS PROTECTED.

- A. Discriminatory Practices Prohibited. The Operator shall not deny service, deny access, or otherwise discriminate against Subscribers, or general citizens on the basis of race, color, religion, national origin, sex, or age. The Operator shall comply at all times with all other applicable federal, state and city laws, and all executive and administrative orders relating to non-discrimination.
- B. Subscriber Privacy. The Operator, the City, and any other person or organization utilizing the Cable System, shall strictly observe and comply with the privacy provisions of the Cable Act and state and federal law.

Section 14-0414. MISCELLANEOUS PROVISIONS.

- A. Compliance with Laws. The Operator and the City shall conform to all state and federal laws and rules regarding Cable Television as they become effective, unless otherwise stated. The Operator shall also conform with all the city ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Ordinance.
- B. Continuity of Service Mandatory. Upon expiration or the termination of a franchise, the City may require the Operator to continue to operate the System for an extended period of time not to exceed six (6) months. The Operator shall, as trustee for its successor in interest, continue to operate the System under the terms and conditions of this Ordinance. In the event the Operator does not so operate the System, the City may take such steps as it, in its sole discretion, deems necessary to assure continued service to Subscribers.
- C. Work Performed by Others.
 - 1. The Operator shall, upon request, give notice to the City specifying the names and addresses of any other entity, other than the Operator, which performs services pursuant to this Ordinance, provided, however, that all provisions of this Ordinance shall remain the responsibility of the Operator, and the Operator shall be responsible for and hold the City harmless for any claims or liability arising out of work performed by persons other than the Operator pursuant to Section 14-0410F.
 - 2. All provisions of this Ordinance shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Ordinance.
- D. Compliance with Federal, State and Local Laws.
 - 1. If any federal or state law or regulation requires or permits the Operator to perform any service or act or shall prohibit the Operator from performing any service or act which may be in conflict with the terms of this Ordinance, then as soon as possible following knowledge thereof, the Operator or City shall notify the other of the point of conflict believed to exist between such law or regulation. The Operator shall at all times comply

with all applicable laws and ordinances enacted by the City.

2. If any term, condition or provision of this Ordinance or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Ordinance and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on the Operator and the City.

E. Nonenforcement by City. The Operator shall not be relieved of its obligation to comply with any of the provisions of this Ordinance by reason of any failure of the City to enforce prompt compliance.

F. Force Majeure. Whenever a period of time is provided for in this Ordinance for either the City or an Operator to do or perform any act or obligation, neither party shall be liable through causes beyond the control of such party, such as unavoidable delays in the issuance of utility company permits, licenses, authorizations and approvals; delays caused by utility company work required to be completed prior to activation; war; riot; insurrection; rebellion; strike; lockout; unavoidable casualty or damage to personnel, materials or equipment; fire; flood; storm; earthquake; tornado; orders of a court of competent jurisdiction; or any act of God, an upon the occurrence of any such event, that time period shall be extended for the amount of time said party is so delayed.

G. Miscellaneous Violations.

1. From and after the acceptance of the Ordinance, it shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in the City any television signals or radio signals by means of a System using public right of ways unless a permit therefor has first

been obtained pursuant to the provisions of this Ordinance, and unless such permit is in full force and effect.

2. From and after the acceptance of the Ordinance, it shall be unlawful for any person to construct, install or maintain within any street in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, or the City's official map or the City's major thoroughfare plan, any equipment or facilities for distributing any television signals or radio signals through a System, unless a permit authorizing such use of such street or property or areas has first been obtained.
- H. Emergency Use. In the case of any emergency or disaster, the Operator shall, upon request of the City, make available its System and related facilities to the City for emergency use during the emergency or disaster period.
 - I. Controlling Law. This Ordinance shall be construed and enforced in accordance with the substantive laws of the State of North Dakota.
 - J. Captions. The paragraph captions and headings in this Ordinance are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Ordinance.
 - K. Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

CHAPTER 14-05
BENCH SIGN FRANCHISE
(Source: Ord. 854, Sec. 1 [2009])

SECTIONS:

- 14-0501. Permit for Benches.
- 14-0502. Construction and Design.
- 14-0503. Five-Year Permit and Revocation Thereof.
- 14-0504. Regulations Governing Location of Bench Signs.
- 14-0505. Removal of Benches.
- 14-0506. Advertising Revenue.
- 14-0507. Indemnity.
- 14-0508. Liability Insurance.
- 14-0509. Default.
- 14-0510. Named Representative.

14-0501. Permit for Benches. The City may grant the exclusive right, privilege, and permission to an entity, at its own expense, to install, place and maintain courtesy benches on that portion of the public street between the curb and the property line, subject, however, to the obtaining of a permit and following other regulations contained in this chapter. Provided, however, from the enactment of this Ordinance through January 7, 2016, the City may grant a second temporary franchise to an entity subject to the same terms as the current franchise for a maximum of 15 benches, at sites other than where first franchisee has benches located.

Source: Ord. 1043, Sec. 1 (2015)

14-0502. Construction and Design. The material, construction and design of such benches shall be approved by the Zoning Administrator of the City of West Fargo. A denial of a bench under this section may be appealed to the Planning and Zoning Commission.

14-0503. Five-Year Permit and Revocation Thereof. The bench sign permit granted July 1, 2010, prior to the enactment of this ordinance, shall remain in full force and effect under the terms of the ordinance in effect at the time it was granted through January 7, 2016. On September 8, 2015, the Zoning Administrator will open any sealed bids received for a five-year bench sign franchise commencing January 8, 2016, and terminating on June 30, 2020. The bid shall be in a form provided by the Zoning Administrator which will set forth that the bidder will comply with all of the terms of Chapter 14-05 of the West Fargo Ordinances and set forth the annual payment the bidder will make each year for each bench placed into service under a bench sign permit. The price per bench shall be constant for the full five-year period, and, at a minimum, be for 20 benches, even if 20 bench signs are not

placed. The exclusive five-year franchise will be granted to the bidder with the highest bid price per bench by resolution of the City Commission. The Zoning Administrator shall grant a permit effective January 8, 2016, which permit shall set forth the approved sites for the bench signs. Prior to January 8, the franchisee shall pay the City the price per bench in their bid for every bench sign covered by the permit, but in no event less than 20 bench signs. If additional bench signs are added after the first payment, the payment for additional bench sign(s) must be received by the Zoning Administrator prior to installation of additional bench signs, and those locations will be added to the permit. On or before each July 1 thereafter during the term of the franchise, the franchisee shall pay the Zoning Administrator the price per each bench covered by the permit then in effect. Four months before the expiration of the five-year franchise expires, the Zoning Administrator shall open sealed bids for the next five-year period, and the City Commission shall award the new franchise by resolution. Provided, that if for any reason the franchise is revoked prior to the end of the five-year period, the Zoning Administrator shall request sealed bids for a new five-year period.

Source: Ord. 1043, Sec. 2 (2015)

14-0504. Regulations Governing Location of Bench Signs. The Zoning Administrator must approve all proposed locations for bench signs under this Chapter pursuant to the policy approved by the Planning and Zoning Commission. All locations previously approved will be automatically approved unless removed from the permit pursuant to Section 14-0505. The franchisee may appeal the denial of a location by the Zoning Administrator to the Planning and Zoning Commission. The Planning Commission may amend the policy from time to time, after giving notice to current holder of franchise of proposed changes. The franchisee may appeal the policy set by the Planning and Zoning Commission to the City Commission and request the City Commission amend or revise such policy. No more than 35 bench signs may be permitted under a permit.

14-0505. Removal of Benches. The franchisee agrees to remove any courtesy bench which is not included in the permit within sixty (60) days of the granting of the permit. In addition, after a particular bench location has been included in the permit, the Planning and Zoning Commission may request its removal for just cause after providing the franchisee an opportunity to appear at a meeting to discuss that particular sign. Any such sign ordered to be removed must also be removed within sixty (60) days of the date of such order. There shall be a right of the franchisee to appeal the decision of the Planning Commission to remove a bench sign to the West Fargo City Commission, provided notice of appeal is submitted within thirty (30) days of the decision of the Planning Commission ordering the removal of any sign. The franchisee shall not have the right to place any new benches in the City unless such

location is included in the permit that has been granted. If the franchisee places a bench for which there is no permit, such bench must be immediately removed, and is grounds for termination of the entire permit and franchise.

14-0506. Advertising Revenue. The franchisee shall have the right to place and maintain on its benches display advertising and materials subject to the limitations of this ordinance, and shall receive all revenue received therefrom.

14-0507. Indemnity. The franchisee agrees that it will defend, save harmless and indemnify the City of West Fargo, its officer, agents and employees, from any claim, demand, action, liability, damage, or judgment which may arise out of the operation, location, maintenance and use of said benches.

14-0508. Liability Insurance. The franchisee shall obtain and deposit with the City Auditor of the City of West Fargo policies covering public liability and property damage insurance for the protection of patrons and other users of said courtesy benches, including the City of West Fargo, in responsible insurance companies; the amount of indemnity of such policies shall be not less than \$350,000 for injury to one or more persons in any one accident; the amount of indemnity for property damage in such insurance policy shall not be less than \$100,000 Such a policy shall also contain a provision requiring the insurer to notify the City Auditor of the City of West Fargo at least fifteen (15) days before the expiration of such policy either by cancellation or limitation.

Source: Ord. 1043, Sec. 3 (2015)

14-0509. Default. This franchise is made upon the expressed condition that if the franchisee fails to keep any or all of the covenants and agreements contained in this franchise ordinance, then the franchise shall become null and void at the option of the City, provided that the City shall first give written notice to the franchisee at least thirty (30) days prior to its intention to terminate the franchise and shall set forth therein the specific breach of the franchise and the City's intention to declare the franchise forfeited if such breach not be corrected within the 30-day period.

14-0510. Named Representative. The franchisee hereby agrees to file a written notice with the City Planning Commission of a name of a representative of the franchisee to whom all calls, correspondence, etc., may be referred to as it relates to the purposes of this franchise. Said notice shall contain the name, address and phone number of said representative. Any notice that the City is required to give to the franchisee is sufficient if it is given to the person set forth as named representative at the address filed with the City. If the franchisee fails to supply the

City Planning Commission with the named representative pursuant to this section, franchisee shall be deemed to have waived all notice requirements of this ordinance or other law.

TITLE XV.

Source: Ord. 1072, Sec. 2 (2017)

HEALTH

CHAPTERS:

- 15-01. Board of Health and Health Officer.
- 15-02. Garbage.
- 15-03. Public Nuisances.
- 15-04. Recreational Aquatic Facilities.
- 15-05. Tanning Facilities.
- 15-06. Smoke and Gasses.
- 15-07. Food Service Establishments.
- 15-08. Child Care Facility.
- 15-09. Pet Stores.
- 15-10. Regulations Relating to Cleanup of Clandestine Drug
Lab Sites and Chemical Dump Sites.
- 15-11. Soft-Serve Freezing/Dispensing Machines.
- 15-12. Hotels and Motels.
- 15-13. Tattoos, Body Art and Body Piercing.
- 15-14. Noise Control. Source: Ord. 1095, Sec, 1 (2017)

CHAPTER 15-01

BOARD OF HEALTH AND HEALTH OFFICER.

SECTIONS:

- 15-0101. Board of Health; Members; Powers; Health Officer and Designees.
- 15-0102. Duties of Health Officer, Designees.
- 15-0103. Regulations, Notice of.
- 15-0104. Power to Enter Building.
- 15-0105. Testing for Sexually Transmitted Disease.
- 15-0106. Quarantine Measure Concerning Contagious or Infectious Disease.
- 15-0107. Destruction of Disinfection of Articles Exposed to Infection.
- 15-0108. Public Health Department May Provide Temporary Hospital for Infected Persons.

15-0101. BOARD OF HEALTH; MEMBERS; POWERS; HEALTH OFFICER AND DESIGNEEES. The Board of Health shall be the Board of Health of Fargo Cass Public Health Department. The Board of Health shall have and exercise all powers under the law.

15-0102. DUTIES OF HEALTH OFFICER, DESIGNEEES. The Health Officer and his designees, if any, shall have the following powers and duties:

1. Shall keep a record of the official acts of the local Health Officer.
2. Shall enforce every law and rule relating to preservation of life and health of individuals.
3. May make sanitary inspections of any place within the jurisdiction in which the local Health Officer finds a probability a health-threatening condition exists.
4. May investigate public water and ice supplies suspected of contamination and initiate necessary condemnation proceedings.
5. May enforce school cleanliness; inspect any school that may be overcrowded, poorly ventilated, or unsanitary; and when necessary, report cases of any unsanitary or unsafe school building to the Board of Health for investigation.
6. May take any action necessary for the protection of public health and safety.

7. May determine when confinement and decontamination is necessary for the safety of the public and may establish confinements consistent with procedures provided under N.D.C.C Chapter 23-07.6 and perform any acts required for decontamination when necessary.
8. Shall report any reportable disease to the State Department of Health as required by law.
9. May request the assistance of a county sheriff or police department in the same manner as provided under N.D.C.C. § 23-35-09(3).

15-0103. REGULATIONS: NOTICE OF. The Board of Health shall give notice, as provided by the laws of the State of North Dakota, of all general orders and regulations made by such Board, by publishing the same in the official newspaper within the jurisdiction of the Board, which publication shall be deemed a legal notice to all persons.

15-0104. POWER TO ENTER BUILDING. Whenever the Health Officer, or his designees, or the Board of City Commissioners shall deem it necessary for the preservation of the health of the inhabitants within the City, to enter any building within the City of West Fargo for the purpose of examining into and destroying, removing, or preventing any nuisance, source of filth or cause of sickness, and shall be refused entrance, the Health Officer, his designees, or any member of the Board of City Commissioners may make complaint under oath to the Municipal Judge of the City of West Fargo, stating the facts in the case, so far as he has knowledge thereof. Such Municipal Judge shall promptly review such complaint and if such complaint is reasonably based in fact shall thereupon issue a writ of entry directed to the Chief of Police of the City of West Fargo, sheriff or other peace officer, authorizing him to take sufficient aid and, accompanied by the Health Officer, his designees, or by at least one (1) member of the Board of City Commissioners of West Fargo, between the hours of sunrise and sunset, enter said building to have such nuisances, sources of filth, or cause of sickness destroyed, removed, or prevented under the direction of the Health Officer, his designees, or such member of the Board of City Commissioners as accompanied him.

15-0105. TESTING FOR SEXUALLY TRANSMITTED DISEASE. The Health Officer, when necessary for the protection of public health, shall:

1. Make examination of any person reasonably suspected of being infected with a sexually transmitted disease and detain that person until the results of the examination are known.

2. Require any person infected with a sexually transmitted disease to report for treatment to a reputable physician and to continue such treatment until cured or, if incurable, continue indefinitely such treatment as recommended by the physician.
3. Investigate sources of infection of sexually transmitted diseases.
4. Cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution, including providing proper officials with all relevant information available concerning individuals who are infected with the human immunodeficiency virus and who are engaged in prostitution.

15-0106. QUARANTINE MEASURES CONCERNING CONTAGIOUS OR INFECTIOUS DISEASES. When a case of a contagious or infectious disease exists within the jurisdiction of the Health Department, the Director of the Health Department shall immediately examine the facts of the case and may implement such quarantine and sanitary measures recommended by the Health Officer to prevent the spread of such disease. The Health Officer, or the Director of the Health Department, acting under the Health Officer's authority, may immediately cause any person infected with such disease to be removed to a separate house if, in the opinion of the Health Officer, such person can be removed without danger to that person's health. If the infected person cannot be removed without danger to that person's health, the Health Officer shall make such quarantine regulations as it deems proper with reference to the house within which such infected person is, and may cause the persons in the neighbourhood to be removed, and may take such other measures as it deems necessary for the safety of the inhabitants within its jurisdiction. Such authority and quarantine measures shall comply with N.D.C.C. Chapter 23-07.6 (Communicable Disease Confinement Procedure).

15-0107. DESTRUCTION OF DISINFECTION OF ARTICLES EXPOSED TO INFECTION. The Health Department or Health Officer may cause to be destroyed any bed or bedding, curtains, carpets, or other articles which have been exposed to infection from infectious or contagious disease and may allow reasonable compensation for the same, or may provide a proper place with all the necessary precaution attendant upon the disinfection of such articles, and may provide transportation for the conveyance of such articles.

15-0108. HEALTH DEPARTMENT MAY PROVIDE TEMPORARY HOSPITAL FOR INFECTED PERSONS. The Health Department may provide such temporary hospital or place of reception for persons afflicted with infectious or contagious diseases as it judges best for their

accommodation and the safety of its inhabitants. It may provide necessary transportation for the conveyance of such persons to such hospital. All such hospitals, and all private houses or places where exist any infectious or contagious diseases, during the existence of such disease, shall be under the control and subject to the regulations of the Board of Health. All the inmates of such house or other place, during the existence of such disease therein, must conform to the regulations and obey the instructions of the Board of Health with reference thereto.

CHAPTER 15-02

GARBAGE

SECTIONS:

15-0201.	Definition of Terms.
15-0202.	Garbage Cans - Required - Capacity - Construction.
15-0203.	RESERVED FOR FUTURE USE.
15-0204.	Garbage Can to be Emptied: When.
15-0205.	Who May Remove Contents of Garbage Can.
15-0206.	Removal of Garbage Not to be Interfered With.
15-0207.	Garbage Collection Fees.
15-0208.	Collection by City Employees or by Contract.
15-0209.	Garbage Contract - Advertising for Bids - Awarding-Bond Required.
15-0210.	Garbage Not Meeting Specifications.
15-0211.	Duty of City Sanitation Superintendent.
15-0212.	Other Garbage Haulers.
15-0213.	Enclosure for Garbage Vessels.
15-0214.	Penalty.
15-0215.	Separability of Provisions of Article.
15-0216.	Collection of Recyclable Materials.
15-0217.	Anti-Scavenging Clause.

15-0201. DEFINITION OF TERMS. The following definitions shall apply in the interpretation and enforcement of this chapter.

1. "Garbage" shall include refuse accumulation of animals, fruit, or vegetable matter, liquid or otherwise, that attends the preparation, use, cooking, dealing in, or storing of meat, fish, fruit, or vegetables.
2. "Rubbish" shall include all refuse not included in garbage and ashes. It includes tin cans, bottles, glass, scraps of iron, tin, wire, or other metals, rags, old clothing, unflattened paper containers, paper not used in preparation of food and drinks, old rubber, pieces of wood, boxes, barrels, crates, feathers, weeds, grass, lawn clippings, tree limbs, provided they are bundled or boxed and under two inches in diameter and not more than two feet in length, and similar refuse of every character collected or accumulated within the City of West Fargo.
3. "Ashes" shall include the residue from burning of wood, coal, coke, or other combustible materials for the purpose of heating, cooking, and disposing of waste and combustible materials.

4. "Recyclable material" shall include newsprint, rinsed glass bottles and jars and other glass containers without rings and caps, aluminum cans, tin and steel cans, flat corrugated cardboard, plastics, and scrap metal.

15-0202. GARBAGE CANS - REQUIRED - CAPACITY - CONSTRUCTION. Every owner or occupant of any house, hotel, restaurant, building, flat, apartment, tenement, commercial building, tourist court, or mobile home park unit in the City, where persons reside, board or lodge, or where animal or vegetable food is accumulated, kept for sale, prepared or served, shall provide for such house, hotel, restaurant, building, flat, apartment, tenement, commercial building, tourist court or mobile home park unit, and at all times maintain in good order a vessel or vessels for garbage.

For each flat, apartment, tenement, building, or mobile home park unit, one (1) such vessel for each living unit shall be provided.

Such vessel for garbage shall be watertight and made of metal or plastic with a close-fitting metal or plastic cover, and shall have a capacity of not less than ten (10) nor more than thirty-three (33) gallons. However, one (1) or more larger containers of such size and type as is approved by the City Public Works Director may be used if such Public Works Director determines the same to be necessary. Garbage receptacles should be placed on the premises, under the direction of the Public Works Director as to be easily accessible to the garbage collectors.

15-0203. RESERVED FOR FUTURE USE.

15-0204. GARBAGE CAN TO BE EMPTIED: WHEN. All garbage receptacles shall be emptied on the following schedule: In the case of private residences, said garbage collection shall be made at least once each week; and for all other places of business garbage collection shall be made as often as deemed necessary by the City Sanitation Superintendent.

15-0205. WHO MAY REMOVE CONTENTS OF GARBAGE CAN. It shall be unlawful for any person, firm or corporation, or any agent or employee thereof to haul, carry or convey through, along, or upon any public street, alley or sidewalk within the City of West Fargo, any garbage, rubbish, or ashes as classified under this chapter unless employed, licensed or permitted by the City of West Fargo, to carry or convey garbage.

15-0206. REMOVAL OF GARBAGE NOT TO BE INTERFERED WITH. No person shall obstruct, delay or interfere with any garbage collector engaged in collecting or removing garbage, rubbish, or ashes who is under the employ, license, and permit of the City of West Fargo.

15-0207. GARBAGE COLLECTION FEES. The fees for garbage collection shall be paid monthly in advance and shall be as follows:

1. Single Family Residence: \$13.00 per month.
2. Multiple Dwellings and mobile home park unit property: \$13.00 per month for each house keeping unit.
3. Commercial Establishments, factories, places of public entertainment and other business places shall be charged \$3.15 per cubic yard collected per month, with a minimum monthly charge of \$13.60 per month.
4. Commercial Establishments, factories, places of public entertainment and other business places may rent dumpsters from the City, if available. The rental charge shall be \$5.30 per cubic yard capacity of dumpster per month.

The payment in all cases for garbage service pickup collection and disposal shall be made directly to the City of West Fargo.

15-0208. COLLECTION BY CITY EMPLOYEES OR BY CONTRACT. The City either may purchase, maintain, or lease and operate equipment for the removal and disposal by City employees of all or any part of the garbage, rubbish, and ashes within the City of West Fargo or may provide for the collection, removal, or disposal thereof, in whole or in part, by any person, firm, or corporation with whom the City now has, or hereinafter may have, duly contracted as hereinafter provided.

15-0209. GARBAGE CONTRACT - ADVERTISING FOR BIDS - AWARDING - BOND REQUIRED. If it shall be deemed advisable by the Board of City Commissioners, the City Auditor shall advertise for bids for the removal of garbage, rubbish, and ashes out of the City limits under such conditions as the Board of Commissioners may designate. Such notice shall be published twice, once each week in the official newspaper of the City of West Fargo. Each bid shall be accompanied by a certified check in the sum of Five Hundred Dollars (\$500.00), payable to the order of the City Treasurer, which check shall be forfeited to the City if the successful bidder fails to enter into a contract with the City and give bond as provided below. The contract or contracts, as the case may be, shall be awarded to the lowest responsible bidder or bidders, if to be let by competitive bids. The person or persons obtaining such contract from the City shall execute a bond to the City of West Fargo in such sum as the Board of City Commissioners may provide for the full and faithful performance of all the agreements of said contract and a complete compliance with this ordinance.

15-0210. GARBAGE NOT MEETING SPECIFICATIONS.

A. The following items shall not be picked up as part of the garbage collection system of the City of West Fargo, and it shall be unlawful to place out for collection any of the following items:

1. Liquids.
2. Sludges (including sewage sludges, lime sludges, bar screenings and similar materials).
3. Animal manure.
4. Septic tank pumpings.
5. Unrinsed pesticide containers.
6. Hazardous wastes including:
 - a. Ignitibles (solvents, fuels and similar materials).
 - b. Corrosives (acids, alkalies and similar materials).
 - c. Reactives (hypo chlorites, swimming pool chemicals, cyanides, and similar materials).
 - d. EP toxic (paint sledges containing lead, chrome and similar materials).
7. Waste oil.
8. Asbestos.
9. Infectious wastes.
10. PCB's.
11. Large quantities of fly ash, soluble material, such as salt, may be restricted or require special handling.

B. The following items will be picked up not as part of the regular collection, but for a special fee to be set by the Public Works Director:

1. Lead acid batteries.
2. Tires.
3. Appliances.
4. Furniture.

5. Other items with the approval of the Public Works Director.

15-0211. DUTY OF CITY SANITATION SUPERINTENDENT. It shall be the duty of the City Sanitation Superintendent of the City of West Fargo to make such rules as he may deem necessary to regulate, enforce and carry out provisions of this chapter.

15-0212. OTHER GARBAGE HAULERS. No person, firm, corporation, or other business entity shall engage in the business of removing, collecting, transporting, or disposing of garbage, rubbish, ashes or recyclable materials as defined in Section 15-0201 within the city limits of West Fargo without first having obtained a permit therefor from the City Auditor. The fee for such permit shall be \$15. A separate permit shall be required for each entity served in West Fargo. The permit for hauling garbage under this chapter shall only be granted when the City Public Works Director, in his discretion, determines that it would not be feasible for the City to haul garbage from a specific commercial or industrial facility because of the quantity or unusual nature of the garbage. Application for such permit shall be made to the Public Works Director upon forms provided by him, and such application shall contain, among other things, the following information: the name of the hauler, its address and description of vehicle or vehicles in which garbage or recyclable materials are to be hauled in West Fargo, and the name and address of the specific commercial or industrial entity to be served. Such permit shall be valid for a one (1) year period, and the applicant must reapply each year thereafter for a new permit. The permit may be revoked by the Board of City Commissioners for violation of any provisions of this chapter. No such revocation shall become effective until notice shall first be given to the holder of the permit by certified mail stating the reasons for such revocation. Such revocation shall become final unless, within seven (7) days from the date of the mailing of such notice, the holder of such permit shall, in writing, request a hearing thereon by the Board of City Commissioners. The hearing shall be held at the next regularly scheduled meeting of the Board of City Commissioners, and the decision of the Board shall be final.

15-0213. ENCLOSURE FOR GARBAGE VESSELS. All dwelling units and All commercial establishments shall have approved enclosures for garbage cans which enclosures must meet minimum specifications set forth by the Board of City Commissioners and on file with the City Auditor.

15-0214. PENALTY. Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such a violation continues shall be considered a separate offense.

15-0215. SEPARABILITY OF PROVISIONS OF ARTICLE. It is the intention of the Board of City Commissioners that the separate provisions of this article shall be deemed independent of all other provisions herein, and it is further the intention of said Board that if any provisions of this article be declared invalid, all other provisions thereof shall remain valid and enforceable.

15-0216. COLLECTION OF RECYCLABLE MATERIALS. Residents of residential dwellings and commercial buildings may participate in the City's plan of separation of recyclable materials as defined in Section 15-0201. The collection of separated materials shall be at such regular times as set by the City. Materials shall only be collected if set out in special recycling containers authorized by the City.

15-0217. ANTI-SCAVENGING CLAUSE. Ownership of separated recyclable materials set out for collection by the City shall be vested in the City. It shall be unlawful for any person, firm, or corporation to pick up separated recyclable materials for his/her own use, except the owner, lessee, or occupant of a residential dwelling may take back materials set out at that particular dwelling. In addition, any person, firm, or corporation may pick up recyclable materials pursuant to a special permit as provided in Section 15-0212.

CHAPTER 15-03

PUBLIC NUISANCES

SECTIONS:

15-0301.	Nuisances - Defined.
15-0302.	Nuisances Prohibited.
15-0303.	Definitions.
15-0304.	Sanitary Nuisances.
15-0305.	Noxious Weeds.
15-0305A.	Control of Grasses and Non-Noxious Weeds.
15-0306.	Trees and Hedges as Traffic Hazards - Nuisances.
15-0307.	Junk Automobile, Building Materials - Storage or Accumulation Contrary to Public Health and Welfare.
15-0308.	Abandoned Automobiles - Unclaimed Personal Property - Nuisance.
15-0309.	Snow and Ice Removal - Sidewalks - Nuisance.
15-0310.	Snow and Ice Removal - Public Streets - Nuisance.
15-0311.	Dumping - Excavation - Nuisance.
15-0312.	Notice to Remove Nuisances.
15-0313.	Failure to Remove - Prosecution.
15-0314.	Failure to Remove - Civil Penalty.
15-0315.	Penalty.
15-0316.	Authorized Persons.
15-0317.	Odor - Nuisance.
15-0318.	Nuisances on Park Property.

15-0301. NUISANCES - DEFINED. In all cases where no specific provision is made defining what is a nuisance and how the same may be removed, abated or prevented, in addition to what may be declared such herein, those offenses which are known to the common law of the land and the statutes of North Dakota as nuisances may, in case the same exist within the City of West Fargo, be treated as nuisances, and, in addition to those remedies otherwise provided by law, may be proceeded against as in this chapter, provided or in accordance with any other law which shall give the Court hearing the same jurisdiction.

15-0302. NUISANCES PROHIBITED - PERSONS DEFINED. No person, as owner or occupant of any lot or tenement, shall cause or permit any nuisance to be or remain in or upon any such lot or tenement or between the same and the center of the street or alley adjoining. For purposes of this Title, the term "person" includes, where relevant, corporations, unincorporated associations, or other legal entities. For purposes of this Title, words used in the singular include the plural, and the plural, the singular.

Words in the masculine gender include the feminine and neuter genders.

15-0303. DEFINITIONS. Whenever used in this Title, each of the following words and phrases shall have the meaning ascribed to it:

1. "Garbage" shall include refuse accumulation of animals, fruit, or vegetable matter, liquid or otherwise, that attends the preparation, use, cooking, dealing in, or storing of meat, fish, fruit or vegetables.
2. "Noxious Weeds" shall mean any species of plant or vegetation recognized by the North Dakota State Weed Board as noxious.
3. "Junk" shall include, without limitation, parts of machinery or motor vehicles, unused furniture, stoves, refrigerators, or other appliances, remnants of wood, metal or any other cast-off material of any kind, whether or not the same could be put to any reasonable use.
4. "Junk automobiles" shall include, without limitation, any motor vehicle which is not licensed for use upon the highways of the State of North Dakota for a period in excess of sixty (60) days, and shall also include whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of sixty (60) days, provided however, that excepted from this definition are unlicensed but operative vehicles which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.
5. "Abandoned vehicle" shall include, without limitation, any vehicle which has remained on private property for a period of forty-eight (48) continuous hours, or more, without the consent of the owner or occupant of the property, or for a period of forty-eight (48) continuous hours or more after the consent of the owner or occupant has been revoked.
6. "Building materials" shall include, without limitation, lumber, bricks, concrete or cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws, or any other material used in constructing any structure.
7. "Demolition materials" shall include, without limitation, debris resulting from the demolition of buildings; such as concrete, stone, plaster, bricks,

concrete blocks, and other materials that are the result of demolition and construction operations.

8. "Earth material" shall include any rock, gravel, natural soil or fill or any combination thereof.
9. "Hazardous waste" shall mean any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which (a) because of its quantity, concentration, or physical, chemical, or other characteristic, in the judgment of the North Dakota State Health Department may (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed of, or otherwise managed; or (b) is identified by the mechanisms established in this chapter. Such wastes include, but are not limited to, those which exhibit extraction procedure (EP) toxicity, corrosivity, ignitability, or reactivity. The definition of hazardous waste above shall automatically be amended to adopt any amendments to Section 23-20.3-02(5), North Dakota Century Code, and any such amendments shall be of the same force and effect as if fully set out in this Ordinance.
10. "Trash and rubbish" shall include any and all forms of debris not herein otherwise classified.

15-0304. SANITARY NUISANCES.

1. PUMPING SEWAGE INTO OPEN GROUND PROHIBITED. It shall be a nuisance and offense for any person to pump the contents of any cesspool or septic tank or privy vault or other receptacle for the disposal of sewage upon the ground or into any open ditch or drainage course or to dispose of sewage in any manner other than by depositing the same in sewers, privy vaults, cesspools, septic tanks, or similar receptacles or by having said sewage or the contents of any of said receptacles hauled to someplace far enough from the platted portions of this City so as not to create any offensive odor or be a menace to health, and there to dispose of the same by the use of fire, chemicals, or other methods best suited to eliminate odor, destroy pathogenic bacteria and flies.
2. CELLAR, VAULT, PRIVATE DRAIN, CESSPOOL, OR SEWER NOT TO BECOME NAUSEOUS. No person shall allow or permit any cellar, vault, private drain, cesspool, or sewer upon any premises belonging to or occupied by him or her

within the limits of the City to become foul, offensive, or injurious to the public health.

3. HARBORAGE FOR VERMIN PROHIBITED. It shall be a nuisance and offense for any person to accumulate on any premises, improved or vacant, and on all open lots and alleys in the City of West Fargo, any lumber, boxes, barrels, bricks, stones, or similar materials that may be permitted to remain thereon unless the same shall be placed on open racks that are elevated not less than eighteen (18) inches from the ground, and evenly piled or stacked so that these materials will not afford harborage for vermin.
4. DECAYED ANIMAL MATTER NOT TO REMAIN IN CITY. It shall be a nuisance and offense for any person having ownership or control of any animal matter which is unsound or in process of decay within the City of West Fargo, to permit the same to be and remain, while in such condition, within said City, or within one (1) mile of the limits thereof, more than twelve (12) hours after such animal matter shall have become unsound, or after the process of decay shall have begun in the same, whether it be at any establishment for the rendering or changing the character thereof, or elsewhere within the said City, or within one (1) mile of the limits thereof.
5. ACCUMULATION OF ANIMAL WASTE PROHIBITED. It shall be a nuisance and offense for any person, firm, corporation, occupant, or agent or employee thereof, to accumulate or to allow the accumulation of animal waste or excrement such that the conditions of the premises or any structure become, in the opinion of the health officer or his designee offensive and injurious to the public health or to the welfare of any animals kept on the premises. The accumulation of animal waste or excrement shall be deemed a nuisance and shall be abated by the health officer or his designee.
6. CASTING, THROWING OR DEPOSITING GARBAGE IN PUBLIC PLACES PROHIBITED. It shall be a nuisance and offense for any person to cast, throw, deposit or allow to accumulate in or upon any street, alley or other public place or in any ditch adjacent to any street, alley or other public place, any ashes, tin cans, garbage, rubbish, manure or refuse of any kind.
7. ACCUMULATION OF RUBBISH AND GARBAGE IN CITY LIMITS PROHIBITED. It shall be a nuisance and offense for any person to permit or suffer to accumulate in or about any yard, lot, place or premises, or upon any street, alley, sidewalk or City property, adjacent to or abutting upon

any lot, block, place or premises owned or occupied by him within the City limits, refuse, vegetables, decayed or decaying substances, garbage, paper, rubbish, manure, dead animals or ashes or filth of any kind nor suffer such yard, lot, place or premises to be or in such condition. Provided, however, that such section shall not preclude a person from maintaining a compost heap on property owned or leased by that person from materials obtained from that property and to be used on that property.

8. STAGNANT WATER, DUTY TO DRAIN. It shall be a nuisance and offense to allow stagnant water to stand or to remain along the line of any railroad, street, highway, alley, public place or along or upon any land within the City of West Fargo. It shall be the duty of all persons having, using, or occupying land, either as owners, tenants, or having control thereof as agents or otherwise, to remove or drain or cause to be removed or drained all stagnant water therefrom, and upon the order of the City to take all necessary steps to permanently alleviate that problem, including, but not limited to, filling the area in which the stagnant water is or has been standing.

15-0305. NOXIOUS WEEDS PROHIBITED. It shall be a nuisance and offense for any person owning or occupying any lot or tenement in the City of West Fargo, to grow or allow to grow thereon any Noxious Weeds.

15-0305A. CONTROL OF GRASSES AND NON-NOXIOUS WEEDS.

1. No grasses or non-noxious weeds shall be allowed to grow more than eight inches (8") in length upon or along the line of any railroad, street, highway, alley, public place, along or upon any vacant or other lot or place within the City. An area having more than thirty percent (30%) of grass plants or non-noxious weeds in excess of eight inches (8") in length shall be deemed a violation of this section.
2. It shall be the duty of all property owners, occupants, or persons having control over private property to maintain the growth of grasses or non-noxious weeds on such property so that it does not exceed eight inches (8") in length. These requirements apply to areas along and upon any railroad, street, highway, alley, public place or along or upon any vacant or other lot or place within the City. An area having more than thirty percent (30%) of grass plants or non-noxious weeds in excess of eight inches (8") in length shall be deemed a violation of this section.

3. Notice of a violation of this section shall be mailed to the registered property owner as shown in the property tax records maintained in the City Assessor's office, upon any agent of the property owner, and upon any occupant of the property when appropriate. The owner, agent, tenant or person in charge of the property shall take appropriate action to cut and maintain all grasses and non-noxious weeds not to exceed eight inches (8") in height, as directed by the City within the specified period of time. Such notice may include notice to fill excavations and remove dirt piles so as to allow for the proper mowing of the grasses or non-noxious weeds. If the property owner, tenant, or agent fails to take such appropriate action within the time period as directed by the City, the City shall have authority to cut or mow the non-noxious weeds and grasses, fill any excavations, or remove dirt piles and assess the costs against the landowner.
4. The requirements of this section requiring control of non-noxious weeds and grasses do not apply to property where the owner or person in control of the property has applied for and obtained a land management plan permit from the City allowing grass growth or non-noxious weeds to exceed eight inches (8") in length.
5. To obtain a land management plan permit, the applicant must submit a written plan identifying the specific area where the plantings or grass or non-noxious weeds are planned to exceed eight inches (8") in length, a statement of intent and purpose for the area, a drawing, plat plan and/or survey showing the location of the planting on the applicant's property, a detailed description of the plant types and plant succession involved, and specific management and maintenance techniques to be employed. The land management plan must include provisions for maintaining plantings at a length not to exceed eight inches (8") in the area between the sidewalk and the street, or a strip not less than fifteen feet (15') adjacent to the street where there is no sidewalk, as well as a strip not less than four feet (4') adjacent to neighboring property lines unless waived in writing by the abutting property owner on the side so affected. Any such waiver of the requirements shall be affixed to the application and plan. No area of City-owned property within any street right-of-way may be included within a land management plan. This shall include the property between the sidewalk and the street and not less than fifteen (15) feet adjacent to the street where there is no sidewalk. As a condition of receiving approval of a land management permit, the applicant agrees and understands

to mow or cut any grass or plantings when ordered to do so by the City official.

6. An application for a land management plan permit shall be on a form provided by the City and shall be submitted to the City Forester. A copy of the application shall be mailed to each of the owners of record, as listed in the office of the City Assessor, who are owners of the property situated in whole or in part within 200 feet of the boundaries of the properties affected. The application and any related information shall be considered by the City Forester. The City Forester shall have authority, after reviewing all appropriate materials and information, to approve or deny the application. An applicant who has had a permit denied or revoked, or an affected property owner in the event a permit is granted, may appeal the decision of the City Forester to the Board of Adjustment. Such appeal must be made in writing within fifteen (15) days of the City Forester's decision and shall be heard at a regular meeting of the Board of Adjustment.
7. An owner or occupant receiving a land management plan permit agrees to maintain any grass or plantings so as not to present hazards or to create a nuisance for adjoining properties, or to persons or vehicles traveling on the public ways. An owner or occupant receiving such permit also agrees to manage and maintain such grass or plantings such that they do not present a hazard to structures on affected land and to maintain such plantings as to enhance the appearance of the property on which they are located.
8. Notwithstanding issuance of a land management plan permit, the City may order the cutting of such grass or plantings included within a land management plan at any time the City determines that the growth may constitute a fire or safety hazard as to cause danger to the safety of the inhabitants of any residential structure located on the premises, or to citizens and residents of the neighborhood. Any costs incurred by the City shall be charged to the owner, occupant, or person in control of the property as authorized under this section.

15-0306. TREES AND HEDGES AS TRAFFIC HAZARDS- NUISANCES.

1. HEDGE, TREE, OR GROWTH - WHEN A NUISANCE. Any hedge, tree, or growth of any kind or character maintained on any property in the City of West Fargo, so located or of such height as to constitute a traffic hazard by obstructing the view of the driver of any vehicle upon the streets of the City to the extent that such driver

is unable to readily observe the approach of other vehicles on the streets, alleys, and at intersections, or which is likely, because of its location or height, to cause accidents or injury to any person, is hereby declared a nuisance and offense.

2. CHIEF OF POLICE - DUTIES. It shall be the duty of the Chief of Police, whenever it may be called to the attention of his department or any officer or employee thereof, that any hedge, tree, or growth of any kind or character on any property within the City of West Fargo has been so planted or maintained in a place or at a height so as to obstruct the view of the driver of any vehicle on the streets of the City of West Fargo, to the extent that such driver is unable to readily observe the approach of other vehicles on the streets, alleys, and at intersections, or which is likely, because of its location or height to cause accident or injury to any person, to make a thorough inspection of the premises upon and with respect to which such condition is alleged to exist and to make a full and complete report thereof to the Superintendent of Streets.
3. SUPERINTENDENT OF STREETS - DUTIES. If it is the finding of the Superintendent of Streets and the Chief of Police, after review and investigation, that a condition exists with respect to the premises complained against which is dangerous as a traffic hazard and is likely to cause accident or injury to any person, it shall be the duty of the Superintendent of Streets to give or cause to be given notice to the offending person as provided for in Section 15-0312 that such dangerous or hazardous condition exists and that the same is a nuisance and must be abated and eliminated.

15-0307. JUNK, JUNK AUTOMOBILES, BUILDING MATERIALS - STORAGE OR ACCUMULATION CONTRARY TO PUBLIC HEALTH AND WELFARE. It is hereby determined that the storage or accumulation of trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, upon any private property within the City of West Fargo, tends to result in blighted and deteriorated neighborhoods, the increase in criminal activity, the spread of vermin and disease, and is contrary to the public peace, health, and safety and general welfare of the community.

1. UNLAWFUL TO ACCUMULATE ABANDONED VEHICLES AND JUNK. It shall be a nuisance and offense for any person to store or permit the storage or accumulation of trash, rubbish, junk, junk automobiles, or abandoned vehicles on any private property in the City of West Fargo except within a completely closed building or upon the business premises of a duly licensed junk dealer, junk buyer,

dealer in used auto parts, dealer in secondhand goods, or junk gatherer.

2. UNLAWFUL TO DISMANTLE AUTOMOBILE - EXCEPTION. It shall be a nuisance and offense for any person to dismantle, cut up, remove parts from, or otherwise disassemble any automobile, whether or not the same be a junk automobile, abandoned vehicle or otherwise, or any appliance or machinery except in a completely enclosed building or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, dealer in secondhand goods, or junk gatherer.
3. UNLAWFUL TO STORE BUILDING MATERIALS - EXCEPTION. It shall be a nuisance and offense for any person to store or permit the storage or accumulation of building materials on any private property, except in a completely enclosed building or except where such building materials are part of the stock in trade of a business located in said property, or except when such materials are being used in the construction of a structure on the property in accordance with a valid building permit issued by the City of West Fargo, and unless said construction is completed within a reasonable period of time.

15-0308. ABANDONED AUTOMOBILES -UNCLAIMED PERSONAL PROPERTY - NUISANCE. Any motor vehicle, animal or other article of personal property, located within the City of West Fargo, the use, condition or status of which is in violation of any ordinance of the City of West Fargo, or any law of the State of North Dakota, and constitutes an obstruction, hazard or detriment to public traffic, snow removal operations, public safety or public health, or which may be damaged, disabled or otherwise involved in an accident, or in the commission of any violation of any ordinance of the City of West Fargo or any law of the State of North Dakota, or any vehicle or other article of personal property abandoned or unclaimed within the City of West Fargo, is hereby declared to be a nuisance.

1. REMOVAL AND IMPOUND - CHIEF OF POLICE - DUTY. The Chief of Police or any member of the West Fargo Police Department or any peace officer acting in that capacity within the City limits of the City of West Fargo shall remove or cause to be removed to City Hall, or other place designated by the Chief of Police, any personal property described in the immediately preceding paragraph and may impound and retain the same until the expense of removal, storage and impounding fee, if any, is paid, together with the amount of any fine, costs, bail or other claims of the City of West Fargo against the owner, or any other person lawfully entitled to the

possession thereof the provisions of Section 15-0312 notwithstanding.

2. IMPOUND PROPERTY; WHEN HELD AND SOLD. If not reclaimed and redeemed by the true owner or the person lawfully entitled to the possession thereof within a period of sixty (60) days after impounding, any article or personal property described in the first paragraph of this section may be sold and disposed of by the Police Department of the City of West Fargo in the manner set out in Section 1-0703 of the ordinances of the City of West Fargo.
3. REPORT TO CITY AUDITOR, DISPOSITION OF PROCEEDS. Within thirty (30) days after such sale, the person making the sale shall make out in writing, and file with the City Auditor of West Fargo, a full report of such sale specifying the property sold, the amount received therefor, the amount of costs and expenses, and the disposition made by him of the proceeds of the sale. The proceeds arising from such sale shall be delivered over to the City Treasurer of West Fargo and credited to the General Fund.

15-0309. SNOW AND ICE REMOVAL - SIDEWALKS - NUISANCES. It shall be a nuisance and offense for any person, as owner or occupant of any lot or tenement, to allow snow or ice to accumulate and remain upon any public sidewalk which abuts such lot or tenement.

15-0310. SNOW AND ICE REMOVAL - PUBLIC STREETS - NUISANCES. It shall be a nuisance and offense for any person to allow a motor vehicle or other article of personal property to obstruct, prevent or otherwise hinder the removal of snow and ice from any public street, alley or other roadway customarily used for travel. The provisions of 15-0308 to the extent relevant, shall apply to the removal or abatement of such nuisance.

15-0311. DUMPING - EXCAVATION - NUISANCE.

1. Dumping defined - for purposes of this section, dumping shall mean placing, burying or storing on, underneath or upon any land.
2. Within the City limits of West Fargo it shall be deemed a nuisance for any person to engage in dumping or any landowner, tenant or occupant to permit dumping of hazardous wastes except that hazardous wastes may be stored above ground if that person first obtains a permit from the North Dakota Department of Health pursuant to Chapter 23-20.3, North Dakota Century Code.

3. Within the City limits of West Fargo it should be deemed a nuisance for any person to engage in dumping or any landowner, tenant or occupant to permit the dumping of garbage, junk, demolition materials, trash and rubbish unless the dumping is at a site for which the Board of Adjustment has granted a conditional use or other permit pursuant to the zoning regulations of the City of West Fargo, or unless a permit to use certain material for fill is first obtained from the Building Inspector. It shall not be deemed a nuisance pursuant to this section if the person is in compliance with another section of Chapter 15-02 of the Revised Ordinances of the City of West Fargo allowing the storing of materials under certain circumstances, or if the person is in compliance with the regulations for the storage of garbage contained in Chapter 15-02 of the Revised Ordinances of the City of West Fargo.
4. Within the City limits of West Fargo it shall be deemed a nuisance for any person to engage in dumping or any landowners, tenants, or occupants to permit the dumping of earth material without first obtaining a permit from the Building Inspector. Provided that no permit is necessary where the quantity of earth material is less than 100 cubic yards and the earth material when placed does not exceed 1 foot in depth. Provided further that no permit is needed when the person has first obtained a building permit and the dumping of earth material is connected with the project for which a building permit was granted.
5. The Police Department of West Fargo is hereby given the authority to prohibit and to stop dumping by any person within the City limits of West Fargo unless and until the person or persons stopped from dumping can establish to the satisfaction of the West Fargo Police Department that such dumping is permitted under the Revised Ordinances of the City of West Fargo. Any person prohibited from dumping by the West Fargo Police Department shall within 24 hours be entitled to a hearing before the Building Inspector, or in his absence, a Municipal Judge of the City of West Fargo to determine whether or not the dumping is in violation of the ordinances of the City of West Fargo.
6. Within the City limits of West Fargo it shall be nuisance if the Building Inspector determines that any existing or future excavation or embankment or cut or fill on private property has become a hazard to life or limb, or endangers property, or adversely affects the safety, use, or stability of a public way or drainage channel or has a significant adverse impact on the

drainage of water along its natural course resulting in the creation of stagnate water or the unnatural accumulation of water upon the property of another.

7. The permit from the Building Inspector authorized by Sections 15-0311(3) and (4) shall not be granted unless the following conditions are met:
 - (a) A permit fee in the amount of \$25 is paid to the Building Inspector.
 - (b) No real estate taxes are delinquent on the real property covered by the application.
 - (c) That a drainage plan is provided by the applicant showing the final grade of the real property after the requested dumping and which establishes, to the satisfaction of the City Engineer, that no other property will be adversely affected by the dumping.
 - (d) That a bond or a certified check payable to the City is deposited with the City Auditor in an amount set by the City Commission. The bond or certified check shall be for the purpose of cleaning up the site if the conditions of the permit are not followed and if the applicant does not immediately clean up the site. The amount of the bond or certified check shall be based on the City Commission's estimated cost to clean up the site if the conditions of the permit are not followed.
8. The permit from the Building Inspector authorized by Sections 15-0311(3) and (4) shall set forth the following conditions:
 - (a) The site where the dumping may occur.
 - (b) What materials may be dumped.
 - (c) That the drainage plan be followed.
 - (d) That if concrete or similar materials are permitted to be used as fill, the permit shall state the time period in which such materials may remain uncovered.
 - (e) That the permit shall expire one (1) year after issuance.
 - (f) Any other condition which the City Commission deems advisable in order to control the dumping.

15-0312. NOTICE TO REMOVE NUISANCES. Except where otherwise provided in this chapter, if any person within the limits of the City of West Fargo shall permit or suffer on his premises or premises of which he may be the occupant, any nuisance the Board of City Commissioners, any member of the Board of City Commissioners, or such persons authorized by the City Commission shall cause notice to be given such person to remove or abate such nuisance. The notice shall set forth specifically the nuisance to be removed and the period of time in which it must be removed. The time period allowed for abating the nuisance shall not be less than forty-eight (48) hours after notice shall have been given, provided, however, that the time period may be less if the nuisance has caused or may cause death or injury to any person within the City of West Fargo. Provided further, that the provisions of this section shall in no way abrogate or restrict any emergency authority granted to the Board of City Commissioners or other emergency authority delegated to and exercised by persons duly authorized by the Board of City Commissioners.

15-0313. FAILURE TO REMOVE - PROSECUTION. If any person, as owner or occupant of any lot or tenement, after notice as provided in Section 15-0312, neglects or refuses to remove or abate the nuisance, the person giving such notice shall notify the City Attorney, who may commence prosecution of the offense in the West Fargo Municipal Court or seek injunctive relief in any courts of the State of North Dakota.

15-0314. FAILURE TO REMOVE - CIVIL PENALTY. The City official who sent notice of removal or abatement of a nuisance, may, in addition to the remedies set out in the previous section, if the nuisance is not abated within the time period set out in the notice, send notice to the violator of a hearing to be held by the City Commission to determine whether or not City officials should be directed to abate the nuisance. The violator must be given five (5) days written notice of the time of the hearing. If at that hearing the Commission determines that City officials should abate the nuisance, the Commission shall direct employees of the City to do so, and direct that all costs and expenses incurred in that abatement shall be assessed against the property concerned by the City Auditor. Provided, however, if the City official determines that the nuisance presents a clear and present danger of injury or death to a person in West Fargo, that official can direct City officials to abate the nuisance immediately without the need for Commission action. Once each year, after written notice to all violators, the Board of City Commissioners shall review all such assessments and hear all complaints against the same and approve the assessments as finally determined by the Board of City Commissioners. Such special assessments shall then be certified to the County Auditor and be placed upon the tax roll for that year and to be collected as other taxes. The decision of the City Commission or City official to abate the nuisance in no way relieves the violator of prosecution under the prior section.

15-0315. PENALTY. Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each forty-eight (48) hour period such violation continues shall be considered a separate offense.

15-0316. AUTHORIZED PERSONS. The following persons are hereby authorized by the City Commission to send out notices and take other actions as set out in this chapter to abate nuisances:

1. Any member of the City Commission.
2. City Health Officer.
3. Chief of Police.
4. Superintendent of Streets.
5. Chief of the West Fargo Volunteer Fire Department
6. Building Administrator.
7. City Forester.
8. Any contracted health officials.

15-0317. ODOR - NUISANCE.

1. Within the city limits of the City of West Fargo it shall be deemed a nuisance if there is a discharge into the ambient air of any objectionable odorous air contaminant which is in excess of two (2) odor concentration units outside the property boundary from which the emissions are being discharged.
2. A Barnebey-Cheney Scentometer properly maintained, or other instrumental method as approved by the State Health Department, must be used in determination of the intensity of an odor. An odor will be considered objectionable when at least two inspectors which have been certified by the State Health Department deem that odor objectionable if the odor were present in a place of residence. An "odor concentration unit" means the maximum number of standard units of odor-free air diluting a standard unit of odorous air so that the certified inspector can still detect that objectionable odor in the diluted mixture.
3. No person may discharge into ambient air hydrogen sulfide (H S) in concentrations that would be objectionable on land owned or leased by the complainant or in areas normally assessed by the general public. It

shall be deemed a nuisance if two (2) samples with concentrations greater than 0.05 parts per million (50 parts per billion) are sampled at least 15 minutes apart within a 60-minute period. For measuring emissions of hydrogen sulfide, an ambient air analyzer designed for monitoring hydrogen sulfide must be the method used for determining the concentrations of emissions at the point of measurement, or other instrumental methods as approved by the North Dakota State Health Department.

4. The certified inspectors, in operating the Scentometer, an air analyzer designed for monitoring hydrogen sulfide, or other instrument approved by the State Health Department, must follow North Dakota State Health Department guidelines and procedures in conducting such test.
5. For purposes of this section, if a notice to remove or abate a nuisance is given, the odor nuisance will not be deemed to have been abated unless there are no further violations of Section 15-0317 for a period of thirty (30) consecutive days.

15-0318. NUISANCES ON PARK PROPERTY.

1. No owner, occupant, or user of property abutting Park District property of the West Fargo Park District shall cause or allow water from any down spout, sump pump or similar device to be directly or indirectly deposited on the Park District property.
2. No person shall deposit snow, earth, construction material, or other substance on Park District property of the West Fargo Park District without written permission from the Superintendent of the Park District. Notwithstanding written permission issued by the Park District, no person shall deposit any material containing salt, sand, or other substances which may be harmful to vegetation or other Park District property.
3. The Superintendent of the West Fargo Park District, or any other Park District employee designated by the Superintendent shall have the authority to issue letters to violators of this section. If the violation is not abated within the time set forth in the Notice of Violation, the City Attorney is authorized to prosecute such offenses in the West Fargo Municipal Court. All other procedures and penalties set forth in this chapter are applicable to this section unless in conflict, in which case this section prevails.

CHAPTER 15-04

RECREATIONAL AQUATIC FACILITIES

SECTIONS:

- 15-0401. Definitions.
- 15-0402. Regulation by Health Department.
- 15-0403. Health Department Approval of Construction Plans.
- 15-0404. Fence/Barrier and Gate Requirements.
- 15-0405. Inspection by Health Department.
- 15-0406. Periodic Inspection and Testing by Health Department.
- 15-0407. Licenses and Fees.
- 15-0408. Licenses - Compliance and Revocation.
- 15-0409. Pool Operator Certification.
- 15-0410. Variance.
- 15-0411. Appeals.

15-0401. DEFINITIONS.

1. "Health Department" shall mean the Fargo Cass Public Health Department and its authorized designees and representatives.
2. "Operator" shall mean the person designated by the owner as responsible to operate and maintain the pool in compliance with this ordinance.
3. "Person" shall mean any individual, limited liability company, firm, partnership, association, corporation, company, society, government agency, club, business entity, or any organization of any kind.
4. "Pool" shall mean any structure, chamber, or tank containing an artificial body of water for recreational use, including, without limitation, a competition pool, wading pool, splash pad, spa, lazy river, special purpose pool, plunge pool, water slide, flume, speed slide, wave pool, sand bottom pool, vortex pool, and zero entry pool.
5. "Private residential pool" shall mean a pool connected with a single family residence or with a multi-unit owner occupied complex that is located on private property and that is under the control of the property owner(s), the use of which pool is limited to the owner(s) or invited guests. A pool that is used for commercial purposes is not a private residential pool.

15-0402. REGULATION BY HEALTH DEPARTMENT. The Health Department and agents and employees thereof, shall have authority to regulate the public health and safety in the City of West Fargo concerning use, design, operation, and maintenance of recreational aquatic facilities and shall have such authority to adopt regulations, rules, standards, and practices. Such regulations, rules, standards, and practices shall be approved by the Health Department, are hereby adopted by reference and fully incorporated herein, including any amendments hereinafter adopted, and shall be controlling within the jurisdiction of the Health Department.

No person shall own, operate, or allow to be occupied a recreational aquatic facility, except a private residential pool, without a license for such issued by the Health Department.

15-0403. HEALTH DEPARTMENT APPROVAL OF CONSTRUCTION PLANS. Before work is commenced on the construction of a recreational aquatic facility, or on any alteration, addition, remodeling, or other improvement to a recreational aquatic facility, the plans and specifications shall have been approved by the Health Department. Private residential pools are exempt from this requirement, but must meet barrier requirements and other design standards within the City of West Fargo Ordinances and Codes that have been approved by the Board of City Commissioners.

15-0404. FENCE/BARRIER AND GATE REQUIREMENTS. A fence or other barrier at least six (6) feet in height shall completely encircle all recreational aquatic facilities and private residential pools. Any fence, gate, or door shall be equipped such that it can be latched from the inside to prevent access when the pool is unattended.

15-0405. INSPECTION BY HEALTH DEPARTMENT. The Health Department may inspect or cause to be inspected all recreational aquatic facilities within the City at such times as it may deem necessary to carry out the intent of this ordinance. The Health Department is hereby authorized to enter upon any premises, private or public, to take such samples of water from such pools at such times as it may deem necessary and to require the owner, proprietor, or operator to comply with rules and regulations pertaining to recreational aquatic facilities promulgated by the Health Department, which regulations which have been adopted by the City of Fargo, North Dakota, as may be amended from time to time, are hereby adopted as applicable regulations in the City of West Fargo. In the event of the failure of compliance after due notice with the rules and regulations and requirements of the Health Department or the requirements of this ordinance, the Health Department shall have the power to abate or cause a suspension of the use of such recreational aquatic facility until such time as the same is, in the opinion of the Health Department, no longer a menace or a hazard to health, safety, or morals.

15-0406. PERIODIC INSPECTION AND TESTING BY THE HEALTH DEPARTMENT. All recreational aquatic facilities in use shall be sampled and tested for water quality at intervals to be determined by the Health Department. The allowable limits and frequency of such tests shall be as determined by the Health Department.

15-0407. LICENSES AND FEES. A license shall be issued when investigation has determined that the recreational aquatic facility and its method of operation will conform to the requirements of this chapter. A license, once issued, is nontransferable. A license shall be valid only for the location, unless revoked for cause, for the time period indicated. The license shall be posted in a conspicuous place in the recreational aquatic facility. Fees shall be set by resolution of the board of city commissioners and shall be sufficient to cover the actual expenses of administering and enforcing this program, including the expenses of inspecting. The fee for the periodic tests required in Section 15-0409 shall be established by resolution of the Board of City Commissioners. Periodic inspection and testing fees shall be at the expense of the recreational aquatic facility.

15-0408. LICENSES - COMPLIANCE AND REVOCATION. All licensees shall comply with the requirements of the regulations, rules, standards, and practices promulgated and adopted as set forth in Section 15-0402. The Health Department may revoke any license to operate a recreational aquatic facility or may direct any recreational aquatic facility to close upon violation of this chapter including a violation of the adopted regulations, rules, standards, and practices.

When the Health Department has revoked a recreational aquatic facility license, the person in charge:

1. Shall immediately close the pool for use by anyone;
2. Shall be notified in writing by the Health Department that the recreational aquatic facility license is immediately revoked upon service of the notice and the suspension shall remain in effect until a hearing with the Health Department occurs. If the Health Department finds the operation to be in compliance with the requirements of this chapter, the recreational aquatic facility may reapply for a new license;
3. May request a hearing by filing a written request for a hearing with the Health Department within ten (10) days of receipt of the notice of revocation; and
4. Shall be notified, if a written request for a hearing is not filed within ten (10) days that the revocation shall be sustained.

Any recreational aquatic facility owner whose license has been revoked may, at any time, make written application for a re-inspection for the purpose of re-applying for a license. The application shall include a statement, signed by the owner, that, in the owner's opinion, the conditions causing the revocation have been corrected.

A new license may be issued if the Health Department determines that conditions which prompted the revocation no longer exist.

15-0409. POOL OPERATOR CERTIFICATION. Every recreational aquatic facility must have at least one (1) certified operator on staff to operate or to help operate the facility.

15-0410. VARIANCE. In any case where a license is required by this chapter, and upon application by the responsible person or persons, the Director of the Health Department, or health official designated by the Director of the Health Department, may grant a variance from the strict interpretation or application of law, regulations, or rules. A variance may be granted upon an affirmative finding that all of the following conditions exist:

1. The requested variance arises from conditions that are unique to the subject property or matter that are not ordinarily found in similar properties or matters;
2. The strict application of the applicable standards or regulations will constitute an unnecessary hardship;
3. The strict enforcement of any provision of this chapter, or of the rules and regulations promulgated pursuant to this chapter would be unreasonable, impractical, or not feasible under the circumstances;
4. The variance desired will not adversely affect the public health, safety, or general welfare; and
5. The variance is the minimum variance that will overcome the hardship.

In granting the variance, the Director of the Health Department or designated health official may include such conditions as may be reasonably necessary to maintain the general purpose of these rules and regulations and the interest of applicable local, state, or federal laws.

15-0411. APPEALS. Any person aggrieved by a decision of the Health Department or one (1) of its officials, including, without limitation, an order or denial of an order, or by the denial of a permit or a variance, may appeal such decision by filing a notice of appeal with the Director of the Health Department.

Appeals of final decisions made pursuant to the procedures of this chapter must be filed within ten (10) days of the date of the decision. Said appeal must be in writing and shall be submitted to the Director of the Health Department. The Health Department shall consider the appealed decision as a new matter in a public hearing and, at the close of the public hearing, act to affirm or reverse the original decision.

CHAPTER 15-05

TANNING FACILITIES

SECTIONS:

- 15-0501. Definitions.
- 15-0502. Operation of Tanning Facilities - License Required.
- 15-0503. Regulation, Inspection, and Enforcement by Health Department.
- 15-0504. Display of License - License Nontransferable.
- 15-0505. Application and Fees; Issuance and Expiration of Licenses; and Renewals.
- 15-0506. Advertising and Prohibited Claims.
- 15-0507. Requirements for Written Notice to Customers.
- 15-0508. Requirement to Prominently Display Warning Sign.
- 15-0509. Liability.
- 15-0510. Age Restrictions for Customers.
- 15-0511. Duties of Owner.
- 15-0512. Duties of User.
- 15-0513. Reports of Injury.
- 15-0514. Authority of Health Department to Promulgate Regulations.
- 15-0515. Denial, Suspension, or Revocation of License.
- 15-0516. North Dakota Requirements for Tanning Facilities Adopted.
- 15-0517. Violations and Penalties.

15-0501. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires, the following definitions shall apply:

1. "Applicant" shall mean any person who applies to the Health Department for a license to operate a tanning facility.
2. "Customer" shall mean any member of the public who is provided access to a tanning device in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning device as a benefit of membership in or access to a health club, condominium ownership, apartment complex activity center, hotel or motel room rental, or other offer. For purposes of this chapter, the term customer shall be synonymous with the term "user."
3. "Health Department" shall mean the Fargo Cass Health Department and its authorized designees and representatives.

4. "Operator" shall mean an individual designated by the license holder to manage the tanning facility and to assist and instruct the public in the correct operation of the tanning devices.
5. "Person" shall mean any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group or agency, or a representative or agent of any of these.
6. "Phototherapy device" shall mean equipment that emits ultraviolet radiation and is used in treating disease.
7. "Protective eyewear" shall mean any apparatus designed to be worn over the eyes by a user of tanning devices which absorbs all UV-A, UV-B and visible light up to 500 nanometers but licenses sufficient light to pass through to allow a user to safely negotiate obstacles, and that complies with the standards set forth in 21 CFR 1040.20.
8. "Radiation" shall mean ultraviolet radiation.
9. "Tanning device" shall mean a device that emits electromagnetic radiation having wavelengths in the air between two hundred (200) and four hundred (400) nanometers and which is used for tanning of human skin and any equipment used with that device, including Food and Drug Administration-approved protective eyewear, timers, and handrails. The term does not include a phototherapy device used by a physician.
10. "Tanning facility" shall mean a place or business that provides individuals access to a tanning device.
11. "Ultraviolet radiation" shall mean electromagnetic radiation with a wavelength in air of two hundred (200) to four hundred (400) nanometers.
12. "UV-A" shall mean ultraviolet radiation having a wavelength in air of three hundred twenty (320) to four hundred (400) nanometers.
13. "UV-B" shall mean ultraviolet radiation having a wavelength in air of two hundred ninety (290) to three hundred twenty (320) nanometers.

15-0502. OPERATION OF TANNING FACILITY—LICENSE REQUIRED. No person may operate a tanning facility within the City of West Fargo without a license issued by the Health Department. This provision applies to all persons who possess or operate tanning devices which are made available to the public for the purpose of

artificial light skin tanning, including tanning devices offered for use as part of a membership or premium offer in a health club, condominium, apartment complex activity center, hotel or motel rental.

15-0503. REGULATION, INSPECTION AND ENFORCEMENT BY HEALTH DEPARTMENT. In order to provide for the health and safety, the Health Department shall have authority to regulate and enforce the provisions stated herein concerning the use, operation, and maintenance of tanning facilities within the jurisdiction of the Health Department. The Health Department shall have authority to enter upon the premises of a tanning facility and to inspect or cause to be inspected all tanning facilities as often as is necessary to confirm compliance with the provisions of this chapter. In the event of a failure to comply with the provisions of this chapter, after due notice thereof, the Health Department shall have the power to abate or cause a suspension of the use of the tanning facility until such time as the same is, in the opinion of the Health Department, no longer a hazard to health or safety.

15-0504. DISPLAY OF LICENSE - LICENSE NONTRANSFERABLE. A license issued pursuant to this chapter shall be displayed in a conspicuous place at the tanning facility for which the license is issued. A license issued pursuant to this chapter is non-transferable.

15-0505. APPLICATION AND FEES; ISSUANCE AND EXPIRATION OF LICENSES; AND RENEWAL.

1. Application. The owner of a tanning facility shall submit an application for a license to the Health Department on a form provided by the Health Department along with payment of the required license fee. License fees and fees for renewal thereof shall be established by the Health Department. The application must include the name and complete mailing address of the applicant, the street address of the tanning facility, a scale drawing and floor plan of the proposed tanning establishment and any other information reasonably required by the Health Department for the administration of this section.
2. Issuance of licenses and expiration. Approved licenses shall be issued annually by the Health Department effective January 1 of each year, and shall expire on December 31 of each year.
3. Renewal. Applications for renewal shall be submitted with the appropriate renewal fee to the Health Department on the same form as an initial application.

License renewals will be issued by the health department effective January 1 of each year.

15-0506. ADVERTISING AND PROHIBITED CLAIMS.

1. A tanning facility may not state in any advertising, written or verbal, that tanning is free of risk.
2. A tanning facility may not state in any advertising, written or verbal, that tanning is free of hazards from ultraviolet radiation or has any health benefits other than those recognized by a credible scientific or medical source.
3. No person may state or imply that any activity allowed under a license has been approved by the Health Department.
4. A tanning facility may not state in any advertising that the tanning facility holds a license issued by the Health Department to operate a tanning facility.

15-0507. REQUIREMENTS FOR WRITTEN NOTICE TO CUSTOMERS. A Tanning facility shall give to each of the tanning facility's customer's written notice of the following:

1. Failure to wear the eye protection provided by the tanning facility may result in damage to the customer's eyes and may cause cataracts;
2. Overexposure to a tanning device causes burns;
3. Repeated exposure to a tanning device may cause premature aging of the skin and may cause skin cancer;
4. Abnormal skin sensitivity or burning of the skin while using a tanning device may be caused by:
 - a. certain foods;
 - b. certain cosmetics; and
 - c. certain medications, including tranquilizers, diuretics, antibiotics, high blood pressure medicines, and birth control pills.
5. An individual who takes a drug should consult a physician before using a tanning device.

15-0508. REQUIREMENT TO PROMINENTLY DISPLAY WARNING SIGN. A tanning facility shall display prominently a warning sign in each

area where a tanning device is used. The warning sign must convey the following directions and information:

1. Follow instructions.
2. Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of a tanning device can cause eye and skin injury and allergic reactions. Repeated exposure can cause chronic sun damage, which is characterized by wrinkling, dryness, fragility and bruising of the skin, and skin cancer.
3. Wear Food and Drug Administration-approved protective eyewear.
4. Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the twenty-four (24) hours immediately preceding or immediately following the use of a tanning device.
5. Medications and cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a tanning device if you are using medications, have a history of skin problems, or believe that you are especially sensitive to sunlight. Women who are pregnant or using birth control pills and who use a tanning device may develop discolored skin.
6. If your skin does not tan when exposed to the sun, it is unlikely that your skin will tan when exposed to a tanning device.

5-0509. LIABILITY. A tanning facility's compliance with this chapter does not relieve the owner or any employee of the tanning facility from liability for injury sustained by a user of a tanning device.

15-0510. AGE RESTRICTIONS FOR CUSTOMERS.

1. Use by customers under eighteen (18) years of age. A customer under eighteen (18) years of age shall not be allowed to use a tanning device at a tanning facility unless the customer provides the facility with written consent, in a form prescribed by the Health Department or from a parent or legal guardian, to use the tanning facility. The consent must indicate that the parent or legal guardian has read the warnings required by this chapter and that the customer agrees to wear Food and Drug Administration-approved protective eyewear. The parent or legal guardian shall provide a notarized statement of consent or sign the consent form in the presence of the owner of the tanning facility or an

employee responsible for the operation of the ultraviolet radiation device of the facility. The written consent form expires twelve (12) months from the date signed.

- B. Physician approval required for customers under fourteen (14) years of age. A customer under the age of fourteen (14) years shall not be allowed to use a tanning device at a tanning facility unless he has produced a written order from a physician licensed in this state prescribing or authorizing such use and unless he is accompanied by a parent or legal guardian every time he uses the tanning device.

15-0511. DUTIES OF OWNER. The owner of a tanning facility shall comply with the following requirements:

1. An owner shall provide attendants in the tanning facility who are trained to be capable of providing information and assistance to customers in the proper use of tanning devices. A properly trained attendant must be present during all hours of operation of a tanning facility.
2. Each tanning bed shall be properly sanitized after each use.
3. Properly sanitized and securely fitting Food and Drug Administration-approved protective eyewear, that protects the wearer's eyes from ultraviolet radiation and allows enough vision to maintain balance, shall be made available to the customer.
4. A customer shall not be allowed to use a tanning device unless the customer agrees to use Food and Drug Administration-approved protective eyewear.
5. A customer shall be shown how to use such physical aids as handrails and markings on the floor to determine the proper distance from the tanning device.
6. Timing devices must be accurate within ten percent (10%).
7. Each tanning device must be equipped with a mechanism that allows the customer to turn off the tanning device.
8. Customers shall be limited to the maximum exposure time recommended by the manufacturer.
9. Customers may not be allowed to use a tanning device more than once every twenty-four (24) hours.

10. The interior temperature of the tanning facility may not exceed one hundred degrees Fahrenheit (100° F).
11. A statement obtained as required under Section 15-0510(B) (1) must be retained by the owner for a period of three (3) years unless it is replaced by a new such statement prior to the expiration of such three (3) years.

15-0512. DUTIES OF USER. A user of a tanning facility shall comply with the following:

1. Before a user's first use of a tanning facility in a year, the user shall sign a statement acknowledging that the customer has read and understands the notice required by Section 15-0507 and the warning sign required by Section 15-0508 and specifying that the customer agrees to use Food and Drug Administration-approved protective eyewear.
2. Use Food and Drug Administration-approved protective eyewear at all times while using a tanning device.

15-0513. REPORTS OF INJURY.

1. Injury by customer—duty of owner to report. If a customer of a tanning facility reports to that facility a sunburn injury resulting from the use of a tanning device of the facility, the owner shall provide the customer with written information on how to report the alleged injury to the State Department of Health.
2. Health care provider's duty to report. If a health care provider treats a patient for a sunburn injury and determines, in the exercise of professional judgment, that the injury occurred as a result of using a tanning device at a tanning facility, the health care provider shall report the circumstances of the injury to the State Department of Health. As provided by N.D.C.C. Section 23-39-06, a health care provider making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

15-0514. AUTHORITY OF HEALTH DEPARTMENT TO PROMULGATE REGULATIONS. Regulations creating minimum standards for tanning facilities pertaining to the preparation and care of the equipment, education and information for prospective clients, professional standards for the tanning facility attendants, operators and technicians, sanitation procedures, requirements for single use items, maintenance and retention of records of tanning clients, and requirements for posting of notices and information

regarding tanning facilities may be adopted by the Health Department. Upon adoption thereof, notice of such regulations shall be published in a newspaper of general circulation within the City of West Fargo. A copy of such regulations shall be provided to all tanning facilities so that they may be read by users and by attendants, operators and technicians of a tanning facility.

15-0515. DENIAL, SUSPENSION OR REVOCATION OF LICENSE.

1. The Health Department may deny issuance of a license or may suspend or revoke a license issued under this chapter if the Health Department determines that the applicant or licensee, or an employee thereof, has violated any section within this chapter or is found to have:
 - a. Submitted false or misleading information in the application or in any report made to the Health Department.
 - b. Failed to construct, operate, or maintain the tanning facility in accordance with the application.
 - c. Operated the tanning facility in a way that causes or creates a nuisance or hazard to health or safety.
 - d. Violated any condition upon which the license was issued.
 - e. Failed to allow a Health Department staff person or a duly authorized agent to inspect the facility at a reasonable hour and in a reasonable manner for the purpose of determining compliance with this chapter.
 - f. Failed to pay the license fee.
2. No license issued under the provisions of this chapter shall be suspended or revoked by the Health Department before the Director of the Health Department has issued written notice to the owner and allowed the owner an opportunity to appear and be heard by the Director of the Health Department. The Director of the Health Department may also, in his discretion, issue an order for compliance requiring the owner to correct certain violations within a tanning facility within a certain time period. In the event the owner brings the tanning facility into compliance within the prescribed time, the Director of the Health Department may determine whether

any further discipline is in order. All notices or orders shall be delivered to the owner either by personal delivery or by any form of mail or third-party commercial delivery addressed to the owner at the address noted on the owner's application for tanning facility license and requiring a signed receipt and resulting in delivery to the owner.

3. Any decision of the Health Department may be appealed to the Board of Health.

15-0516. NORTH DAKOTA REQUIREMENTS FOR TANNING FACILITIES ADOPTED. There is hereby adopted by reference by the Board of City Commissioners, for the purpose of prescribing regulations of tanning facilities, those provisions compiled by the North Dakota Department of Health, chapter 33-42 of the North Dakota Administrative Code, and all other applicable chapters or sections of the North Dakota Century Code. This chapter is hereby adopted and incorporated from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the City of West Fargo.

15-0517. - VIOLATIONS AND PENALTY. Any person, firm, or corporation violating the provisions of this chapter shall, upon conviction thereof, be guilty of a class B misdemeanor, and shall be punished by a fine not to exceed One Thousand Dollars (\$1,000) or by imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment.

CHAPTER 15-06

SMOKE AND GASSES

SECTIONS:

- 15-0601. Dense Smoke, Ash Dust, Soot, Cinders, Noxious Gases, and Paint Spray a Nuisance.
- 15-0602. Dense Smoke, Ash Dust, Soot, Cinders, Noxious Gases, and Paint Spray Prohibited.
- 15-0603. Complaints.
- 15-0604. Investigation.
- 15-0605. Action to Abate.
- 15-0606. Penalty for Violation of Chapter.

15-0601. DENSE SMOKE, ASH DUST, SOOT, CINDERS, NOXIOUS GASES, AND PAINT SPRAY AS NUISANCE. The emission of dense smoke, ash dust, soot, cinders, or noxious gases from the stack or chimney of any locomotive or similar machine or contrivance or from the smoke stack or chimney of any building or premises or the emission of paint spray from any paint sprayer or similar apparatus in such quantities as to cause injury or detriment to any person or persons or to the public, or to endanger the comfort, health, or safety of any such person or persons, or in such manner as to cause or tend to cause damage or injury to property is hereby declared to be a nuisance.

15-0602. DENSE SMOKE, ASH DUST, SOOT, CINDERS, NOXIOUS GASES, AND PAINT SPRAY PROHIBITED. No person, persons, association, or corporation shall cause, permit, or allow the escape into the open air from any smoke stack, chimney, or paint-spraying apparatus, of such quantities of dense smoke, ash dust, soot, cinders, acid or other fumes, dirt or other material, noxious gases, or paint spray in such place or manner as to cause injury, detriment, or nuisance to any person or persons or to the public or to endanger the comfort, health, or safety of any such person or persons or the public, or in such manner as to cause or have a natural tendency to cause injury or damage to business or property.

15-0603. COMPLAINTS. Any person or persons having cause for complaint with respect to the violation of Sections 15-0602 and 15-0603 shall file such complaint, in writing, with the Board of City Commissioners, setting forth the facts in connection therewith, including a description of the premises from which such smoke, ash dust, soot, cinders, noxious gases, or paint spray was allowed to escape and the name of the owner thereof.

15-0604. INVESTIGATION. When any complaint with respect to violation of Sections 15-0601 and 15-0602 has been filed with the

Board of City Commissioners, the same shall be referred to the City Engineer for investigation and, if upon such investigation, the City Engineer shall find the conditions complained of such as to justify said complaint, the Board shall, in writing, by registered mail or by personal service upon such owner, notify the owner of said premises to take such steps as, in the judgment of the Board may be necessary to remedy the same, such order to specify the time limit within which such action must be taken.

15-0605. ACTION TO ABATE. In the event that the owner of said premises fails to remedy offensive conditions within the time limit specified in the order given by the Board of City Commissioners as provided in Section 15-0604, the Board may, in its discretion, require the City Attorney to commence an action to abate said nuisance.

15-0606. PENALTY FOR VIOLATION OF CHAPTER. Any person who shall violate any of the terms and provisions of this chapter and who, when notified in writing by the Board of City Commissioners, shall fail, neglect, or refuse to take steps to correct the condition complained of, and to prevent a repetition thereof, within the time specified in the notice provided for in Section 15-0604, shall be guilty of a misdemeanor and, upon conviction shall be punished by a fine not to exceed \$100 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment, in the discretion of the court, for each such offense; the court to have power to suspend said sentence and to revoke the suspension thereof. Each day any person, firm, association, or corporation shall violate any of the provisions of this chapter shall constitute a separate offense.

CHAPTER 15-07

FOOD SERVICE ESTABLISHMENTS

SECTIONS:

- 15-0701. Definitions.
- 15-0702. Regulations by Health Department.
- 15-0703. Approval of Construction Plans.
- 15-0704. Food Service Establishments and Vehicles to be Kept Clean.
- 15-0705. Inspection of Food Service Establishments.
- 15-0706. Bakeries, Bars, Restaurants, Groceries, Meat Market, Mobile Units, Temporary Units or Any Other Food Service Establishments - Inspection of Premises - Inspection Fee - Suspension of License.
- 15-0707. Unwholesome Food, Water, or Other Provisions Not to be Brought Into City.
- 15-0708. Sale of Meat and Poultry - Regulations.

15-0701. DEFINITIONS. In this chapter, unless the context otherwise requires,

1. "Adulterated food" shall mean food which bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health or which bears or contains added poisonous or deleterious substance for which no safe tolerance has been established by regulation, or in excess of such tolerance if one has been established; a food which consists, in whole or in part, of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption; a food which has been processed, prepared, packed, or held under unsanitary conditions, whereby it may have become contaminated with filth or rendered injurious to health; a food which is, in whole or in part, the product of a diseased animal, or an animal which had died otherwise than by slaughter; a food which is in a container composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.
2. "Beverage" shall mean any liquid for drinking, including alcohol and water.
3. "Commissary" shall mean a catering establishment, restaurant, or any other place in which food, containers, utensils, equipment, or supplies are kept, handled, cleaned, prepared, packaged, and stored, including a service center or base of operations

directly from which catering sites, temporary food units, mobile food units or any other off-premises locations are supplied or services. The term does not include an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.

4. "Food" shall mean a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
5. "Food service establishment" shall mean any restaurant, limited restaurant, coffee shop, cafeteria, short-order café, luncheonette, grill, tearoom, sandwich shop, soda fountain, concession stand, tavern, bar, catering kitchen, institutional kitchen, delicatessen, bakery, grocery store, meat market, food processing plant, mobile unit, temporary unit, any stall, shop, store, warehouse, storehouse, wagon, truck, or other vehicle, or any other similar place in which food or drink is held, kept, stored, prepared for sale or service to the public on the premises or elsewhere with or without charge.
6. "Food processing facility" shall mean a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to the consumer and is operating under a federal or state inspection program.
7. "Health Department" shall mean Fargo Cass Public Health Department and its authorized deisgnees and representatives.
8. "Limited restaurant" shall mean a food service establishment that is restricted to a specific menu as determined by the Health Department or an establishment serving only prepackaged foods, such as frozen pizza and sandwiches, which receive no more than heat treatment and are served directly in the package or on single-service articles.
9. "License" shall mean a written authorization to operate issued by the Health Department.
10. "Misbranded" shall mean food, if in packaged form, that lacks a label containing the name and place of business of the manufacturer, packer, or distributor; or an accurate statement of the contents; or if it is offered for sale under the name of another food or if it purports to be or is represented as a food for which a

definition and standard identity has been prescribed and it is not.

11. "Mobile food unit" shall mean a vehicle-mounted food service establishment designed to be readily movable.
12. "Prepackaged food" shall mean any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at a facility approved by the Health Department.
13. "Primal cut" shall mean a basic major cut into which carcasses and sides of meat are separated, including, but not limited to, a beef round, pork loin, lamb flank, or veal breast.
14. "Proprietor" shall mean the person in charge of a food service establishment, whether as owner, lessee, manager, or agent.
15. "Restaurant" shall mean every building or other structure, or any part thereof, and all buildings in connection therewith, that are permanently kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served. The term shall include limited restaurants restricted to a specific menu.
16. "Retail food store/grocery" shall mean any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term does not include an establishment that handles only prepackaged, non-potentially hazardous foods such as candies and other snack foods, roadside or produce markets that offers only whole, uncut fresh fruits and vegetables for sale, or food and beverage vending machines.
17. "Retail meat market" shall mean a commercial establishment and buildings or structures connected with it used to process, store or display meat or meat products for retail sale to the public for human consumption. The term does not include a meat establishment operating under the federal or state meat inspection program.
18. "Temporary food service establishment" shall mean any food service establishment that operates at a fixed location, approved by the Health Department, for not more than 14 consecutive days in conjunction with a single event or celebration. The term does not include

a nonprofit, public-spirited organization or person providing a limited type of food service, such as prepackaged, non-potentially hazardous food items.

15-0702. REGULATION BY HEALTH DEPARTMENT. The Health Department and agents and employees thereof, shall have authority to regulate the public health and safety in the City of West Fargo concerning use, design, operation, and maintenance of food service establishments and shall have such authority to adopt regulations, rules, standards, and practices. Such regulations, rules, standards, and practices approved by the Health Department, are hereby adopted by reference and fully incorporated herein, including any amendments hereinafter adopted, and shall be controlling within the jurisdiction of the Health Department.

No person shall own, operate, or allow to be occupied a food service establishment without a license for such issued by the Health Department.

15-0703. HEALTH DEPARTMENT APPROVAL OF CONSTRUCTION PLANS. Before work is commenced on the construction of a food service establishment, the plans and specifications shall have been approved by the Health Department.

15-0704. FOOD SERVICE ESTABLISHMENTS AND FOOD SERVICE VEHICLES TO BE KEPT CLEAN. Every person keeping, maintaining, or being in charge of any public or private market, bakery, bar, restaurant, grocery, meat market, mobile unit, temporary unit, or any other food service establishment, stall, shop, store, warehouse, storehouse, or wagon, truck, or other vehicle in, on, or about which any meat, fish, oysters, birds or fowls, vegetables, fruit, or other provisions are held, kept, stored, or offered for sale or other disposition shall keep such public or private market, bakery, bar, restaurant, grocery, meat market, mobile unit, temporary unit, or any other food service establishment, stall, shop, warehouse, storehouse, or wagon, truck, or other vehicle in a clean, pure, and wholesome condition; and if any such person shall allow or permit the same to be, become, or remain unclean, impure, or unwholesome, he shall be guilty of a violation of this chapter.

15-0705. INSPECTION OF FOOD SERVICE ESTABLISHMENTS. Every food service establishment shall be inspected by the Health Department as often as necessary to determine compliance with this chapter. Frequency of inspections shall be based on a system of risk categorization which involves types of foods served, the preparation steps these foods require, volume of food, population served, and previous compliance history. It shall be the duty of the Health Department to visit, as often as required, each public and private market, bakery, stall, shop, store, warehouse, and storehouse in the City and each and all wagons, trucks, or other vehicles of vendors or street hawkers in, at, or about which any

meat, fish, oysters, birds or fowls, vegetables, fruit, or other provisions are kept, held, or carried for sale or other disposition as human food and to examine and carefully inspect all such meat, fish, oysters, birds or fowls, vegetables, fruit, or other provisions, and if any adulterated, misbranded, mislabeled, unhealthy, unwholesome, or deleterious meat, fish, oysters, birds, or fowls, vegetables, fruit, or other provisions so intended for sale or other disposition as human food is found in or about any such public or private market, bakery, bar, restaurant, grocery, meat market, mobile unit, temporary unit, or any other food service establishment, stall, shop, store, warehouse, or storehouse, or in any wagon, truck, or other vehicle of vendors or street hawkers, the Health Department shall at once give the person in charge or temporarily in charge of the same notice to remove at once the same out of said City or to such place as the Health Department shall direct or to destroy the same. The person in whose custody and possession the same shall be found to be shall at once remove the same out of the City or to such place as the Health Department shall direct or destroy the same as may be directed. The Health Department, if deemed advisable, may take possession of such unhealthy, unwholesome meat, fish, oysters, birds, fowls, vegetables, fruit, or other provisions so intended for sale or other disposition as human food and destroy the same at the expense of the person in whose custody such unwholesome provisions are found. Furthermore, based upon inspection findings or other evidence, the Health Department may impound any food that is found to be, or suspected of being, contaminated or adulterated and impound equipment or utensils that are found to be unsanitary or in such disrepair that food, equipment, or utensils may become contaminated or adulterated. No food, equipment, or utensils impounded shall be used unless the impoundment has been released.

15-0706. BAKERIES, BARS, RESTAURANTS, GROCERIES, MEAT MARKET, MOBILE UNITS, TEMPORARY UNITS, OR ANY OTHER FOOD SERVICE ESTABLISHMENTS--INSPECTION OF PREMISES--INSPECTION FEE.--SUSPENSION OF LICENSE. The Health Department shall have free access to all bakeries, bars, restaurants, groceries, meat markets, mobile units, temporary units, or any other food service establishment at any reasonable time for purposes of inspection. The Health Department may enter, inspect, photograph, and secure any sample, photographs, or other evidence from every bakery, bar, restaurant, grocery, meat market, mobile unit, temporary unit, or any other food service establishment, for the purpose of enforcing this chapter. A written report of the inspection shall be made and a copy shall be supplied or mailed to the owner, manager, or operator of the food service establishment. If a person or establishment, subject to the requirements of this chapter, refuses to permit entry or inspection, the taking of samples, photographs, or other evidence or otherwise attempts to conceal samples or evidence, the Health Department may obtain an administrative search warrant to obtain the same. All shops, stores, or units as specified in § 15-0701 of this chapter shall pay an annual license fee in an amount to be

established by resolution of the Board of City Commissioners, said fee payable prior to January 1 of each year. A license shall be issued when investigation has determined that the proposed food service establishment and its method of operation will conform to the requirements of this chapter. A license, once issued, is nontransferable. A license shall be valid only for the person, location, type of food sales, or distribution activity approved and, unless suspended or revoked for cause, for the time period indicated. The license shall be posted in a conspicuous place in the food service establishment. Fees shall be sufficient to cover the actual expenses of administering and enforcing this program, including the expenses of inspecting.

Whenever the proprietor of a market, bakery, bar, restaurant, grocery, meat market, mobile unit, temporary unit, or any other food service establishment has been convicted of a violation of this chapter and for a period of ten (10) days after the conviction fails to comply with any provision of this chapter, the Health Department may suspend or revoke the proprietor's license. Any license may be suspended or revoked by the Health Department for violation of this chapter. Bakeries, bars, restaurants, groceries, meat markets, mobile units, temporary units, and any other food service establishments for which the license has been suspended, shall close and remain closed until the license has been reinstated. Any food service establishment for which the license has been revoked shall close and remain closed until a new license has been issued. The Health Department may suspend any license to operate or direct any food service establishment to close if:

- A. Immediate danger to the public health or safety is found, unless the danger is immediately corrected. The Health Department may temporarily suspend the license and order the food service establishment immediately closed. Immediate danger to the public health and safety means any condition, based upon inspection findings or other evidence, that can cause food infection, food intoxication, disease transmission, rodent or insect infestation, or hazardous condition, including, but not limited to, unsafe food temperature, sewage contamination, non-potable water supply, or an employee who is a carrier of a communicable disease;
- B. Operations, facilities, or equipment in the food service establishment fail to comply with the requirements of this chapter;
- C. The operator fails to submit plans as required in this chapter or an inspection indicates that construction or renovation at the facility is not in substantial compliance with the requirements of this chapter;

- D. The operator fails to submit a license application for a food service establishment or change of operator;
- E. The operator was not granted a license under the requirements of this chapter;
- F. The holder of the license does not remit the annual renewal fee;
- G. The holder of the license does not comply with the requirements of this chapter; or,
- H. Interference with the Health Department or its agents and assistants in the performance of its duties has occurred.

When the Health Department has suspended a food service establishment license, the person in charge:

- A. Shall immediately cease all food service operations;
- B. Shall be notified in writing by the Health Department that the food service establishment license is immediately suspended upon service of the notice and the suspension shall remain in effect until a hearing with the Health Department occurs. If the Health Department finds the operation to be in compliance with the requirements of this chapter, the suspension will be lifted;
- C. May request a hearing by filing a written request for a hearing with the Health Department within 10 days of receipt of the notice of suspension; and,
- D. Shall be notified, if a written request for a hearing is not filed within 10 days, that the suspension is sustained.

Any food service establishment owner whose license has been suspended may, at any time, make written application for a re-inspection for the purpose of reinstatement of the license. The application shall include a statement, signed by the owner, that, in the owner's opinion, the conditions causing the suspension have been corrected.

The Health Department may, after providing opportunity for a hearing, modify, suspend, or revoke a license for serious or repeated violations of any of the requirements of this chapter or for interference in the performance of the duty of the Health Department or its agents and assistants.

A license may be reinstated or a new license issued if the Health Department determines that conditions which prompted the suspension or revocation no longer exist.

15-0707. UNWHOLESOME FOOD, WATER, OR OTHER PROVISIONS NOT TO BE BROUGHT INTO CITY. No meat, fish, oysters, birds or fowls, vegetables, fruit, water, ice, beverages, or other provisions of any kind not being then healthy, fresh, sound, wholesome, and safe for human food, nor any part of any animal, fish or fowl that died by accident or from disease, shall be brought into the City, or sold, offered, or held for sale at any public or private market, bakery, bar, restaurant, grocery, meat market, mobile unit, temporary unit, or any other food service establishment, stall, shop, store, warehouse, and storehouse, or in any other place in the City by any person.

15-0708. SALE OF MEAT AND POULTRY--REGULATIONS. No meat or meat products, poultry or poultry products intended for human consumption shall be sold or offered for sale or service within the City unless slaughtered and processed in a federal or state inspected packing plant, slaughterhouse or by the agency that has animal health jurisdiction; all such meat and meat products and poultry and poultry products must be plainly stamped with a state or federal mark of inspection.

CHAPTER 15-08

CHILD CARE FACILITY

SECTIONS:

- 15-0801. Definitions.
 - 15-0802. Application.
 - 15-0803. Certificate of Occupancy Required.
 - 15-0804. Operation of Child Care Facility - License Required.
 - 15-0805. Regulation, Inspection, and Enforcement by Health Department.
 - 15-0806. Display of License - License Nontransferable.
 - 15-0807. Application and Fees; Issuance and Expiration of License; and Renewal.
 - 15-0808. Health and Sanitation Requirements.
 - 15-0809. Safety Requirements.
 - 15-0810. Physical Activity Requirements.
 - 15-0811. Electronic Media Viewing.
 - 15-0812. Beverages.
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15-0801. DEFINITIONS.

1. "Child care facility" shall mean any facility required by the North Dakota Department of Human Services (NDDHS) to have a health inspection where children receive care, and supervision for twenty-four (24) hours or less per day, unaccompanied by the child's parent, guardian, or custodian.
2. "Electronic media" shall mean media that uses electronics or electromechanical energy for the end user (audience) to access the content.
3. "Family child care" shall mean a private residence licensed by NDDHS to provide early childhood services for no more than seven (7) children at any one (1) time, except that the term includes a residence licensed to provide early childhood services to two (2) additional school-age children.
4. "Health Department" shall mean the Fargo Cass Public Health Department and its authorized designees and representatives.
5. "School age children" shall mean children who are at least five (5) years, but not less than twelve (12) years of age.

15-0802. APPLICATION. All child care facilities shall be subject to the requirements of this chapter, including applicable provisions of the Land Development Code.

15-0803. CERTIFICATE OF OCCUPANCY REQUIRED. A certificate of occupancy as required by the Revised Ordinances of 1990 of the City of West Fargo shall be obtained prior to the commencement of the operation of any child care facility.

15-0804. OPERATION OF CHILD CARE FACILITY - LICENSE REQUIRED. No person may operate a child care facility within the city limits of West Fargo without a license issued by the Health Department. The license required by this section shall not be required for a residential child care facility, state licensed preschools, and/or school age programs that do not prepare meals.

15-0805. REGULATION, INSPECTION, AND ENFORCEMENT BY HEALTH DEPARTMENT. In order to provide for the public health and safety, the Health Department shall have authority to regulate and enforce the provisions stated herein concerning the child care facility. The Health Department shall have authority to enter upon the premises of a child care facility and to inspect or cause to be inspected all child care facilities as often as is necessary to confirm compliance with the provisions of this chapter. In the event of a failure to comply with the provisions of this chapter, after due notice thereof, the Health Department shall have the power to abate or cause a suspension of the permit of the child care facility until such time as the same is, in the opinion of the Health Department, no longer a hazard to public health or safety.

The Health Department is authorized to promulgate regulations creating minimum standards for child care facilities in order to provide for the public health and safety.

15-0806. DISPLAY OF LICENSE--LICENSE NONTRANSFERABLE. A permit issued pursuant to this chapter shall be displayed in a conspicuous place at the child care facility for which the license is issued. A permit issued pursuant to this chapter is non-transferable.

15-0807. APPLICATION AND FEES; ISSUANCE AND EXPIRATION OF LICENSE; AND RENEWAL.

- A. Application. An applicant for a license shall submit an application for a license to the Health Department on a form provided by the Department along with payment of the required license fee. License fees and fees for renewal thereof shall be established by the Health Department. The application must include the name and complete mailing address and street address of the child care facility, a scale drawing and floor plan of the proposed child care facility, and any other information reasonably

required by the Department for the administration of this section.

- B. Issuance of License and Expiration. Approved licenses shall be issued annually by the Health Department effective January 1 of each year and shall expire on December 31 of each year.
- C. Renewal. Renewal statements will be sent out by the Health Department prior to the beginning of the new year. License renewals will be issued by the Health Department effective January 1 of each year.

15-0808. HEALTH AND SANITATION REQUIREMENTS. All child care facilities shall comply with the health and sanitation requirements contained in *Caring For Our Children National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care Programs* published edition, and the following most current requirements:

- A. Food preparation shall be conducted in a kitchen in a sanitary manner with proper equipment and cleaning facilities appropriate to the number of children in the facility, and shall be done in accordance with the Public Health Department Requirements for Food and Beverage Establishments. Bottles and infant food/cereal may be prepared in the classroom as long as:
 - 1. A specific sink designated for food preparation is available;
 - 2. If a second sink in the classroom is not available, water for drinking/eating must be obtained from another sink that is designated for food preparation, and the classroom sink/faucet/handles must be sanitized before using for preparing bottles and infant cereal/food.
- B. A specific area shall be designated for diapering.
 - 1. This area shall include a hand sink, designated for hand washing purposes only, diapering supplies and sanitizer at the appropriate concentration.
 - 2. This area shall be used for no other purpose than diapering.
 - 3. The surface of the diapering area shall be nonporous, kept in good repair, and cleaned and sanitized after each use.
 - 4. Diapering procedure shall be posted at each diapering station.

5. A covered receptacle with a step lid shall be provided in the diapering area.
- C. Sleeping areas shall include individual cribs/playpens, beds, cots, or mats for each child, with clean linen and bedding.
1. Cots and mats shall be sanitized after each use unless designated to each child, which shall require weekly sanitization.
 2. Cots and mats shall be in good repair and shall not be stored in restrooms. Each child's sheets, blankets, and nap items must be stored separately from the other children's.
 3. Sheets and blankets shall be laundered weekly, or more frequently if needed. If shared, bedding shall be laundered after use by each child.
 4. Fitted sheets, if used, must be properly fitted so the mattress or pad maintains shape, lays flat, and meets all four (4) corners of the frame of the crib/playpen.
- D. Children with temperatures higher than normal or with contagious diseases shall not be permitted to remain at the child care facility. Children will be excluded from child care due to the following:
1. Fever.
 2. If they are not feeling well enough to participate in care.
 3. If because of illness they require more care than provider can provide.
 4. If they are diagnosed with an illness specified in program's exclusion guidelines policy.
- If a child becomes ill while at the child care facility, that child shall be isolated from the rest of the children in attendance but kept under constant supervision, until the child is picked up by a parent or other authorized person.
- E. The child care facilities shall have adequate sanitary toilet and lavatory facilities available. The water temperature in sinks available to children shall not exceed 120°F.

- F. Hand washing shall be required for all staff, volunteers, and children.
1. Hand washing shall be done at the following times:
 - a. Upon arrival for the day or when moving from one child care group to another.
 - b. Before and after:
 - (1) Eating, handling/preparing bottles/food, or feeding a child;
 - (2) Giving medication;
 - (3) Playing in sensory tables (water, sand, etc.) or with sensory materials (play dough, modeling clay, etc.) that are used by more than one person.
 - c. After:
 - (1) Diapering;
 - (2) Using the toilet or helping a child use a toilet;
 - (3) Handling bodily fluid (mucus, blood, vomit), from sneezing, wiping and blowing noses, from mouths, or from sores;
 - (4) Handling uncooked food, especially raw meat and poultry;
 - (5) Handling pets and other animals as well as their food/supplies/cages;
 - (6) Playing in sandboxes or outside;
 - (7) Cleaning or handling the garbage.
 2. Hand washing shall be done at sinks designated for hand washing only. Hand washing sinks shall be accessible at all times and shall have a supply of soap and disposable towels available at all times. Cloth towels are prohibited.
 3. Proper hand washing technique shall be used:
 - a. Wet hands;
 - b. Apply soap;

- c. Rub vigorously (for at least 20 seconds);
 - d. Rinse hands;
 - e. Dry hands using disposable towel. Use towel to shut off faucet and open restroom door.
- G. The premises and equipment at all child care facilities shall be properly maintained and cleaned as required for the health and protection of the children and staff. Cleaning chemicals shall be stored in an area away from food and inaccessible to children. All chemicals must have an Environmental Protection Agency registered number on the container and be used according to label instructions.
- H. All exterior building openings shall be properly screened or have other approved means of insect exclusion.
- I. Garbage and refuse shall be collected and stored so as to minimize unsanitary conditions which may harbor insects, rodents, or other pests. Waste receptacles shall be covered if they contain food or diapers and other items soiled with body fluids. When feasible waste receptacles shall have a step lid. Receptacles must be kept clean and emptied daily.
- J. All rooms shall be adequately lighted and ventilated, including corridors, halls, stairs and porches.

15-0809. SAFETY REQUIREMENTS. All child care facilities shall comply with the following safety requirements:

- A. Stairs, walkways, ramps, and porches shall be maintained free of water, ice, or snow and shall have non-slip surfacing. Open stairways shall have gates or doors with latches.
- B. Play areas and play equipment shall be maintained in a safe and sanitary condition and shall be supervised by properly trained personnel, pursuant to standards developed by the State of North Dakota.
- C. First aid kits shall be located at convenient places in the child care facility. At least one (1) staff member in each child care facility who has received certified first aid training and CPR must be on the premises whenever children are present. A mobile first aid kit shall be accessible to take outside, in large activity rooms, on field trips, etc. A first aid kit shall be kept in each vehicle used to transport children. First aid kits shall be kept out of the reach of children.

- D. The child care facility shall be kept free of accumulations of refuse, dilapidated structures, vermin, other health and safety hazards, or attractive nuisances.
- E. All furniture, equipment, and toys shall be sturdily constructed without sharp points or edges, shall present minimal hazards to children, shall be maintained in good repair, and shall be appropriate to the ages of the children.

15-0810. PHYSICAL ACTIVITY REQUIREMENTS. All licensed child care facilities shall provide a program of age and developmentally appropriate physical activity that comply with the following:

- A. Participate, and ensure staff participates, in approved trainings equaling at least two (2) hours of physical activity (above and beyond playground safety) annually. Initial training must be completed within three (3) months of hire.
- B. Toddlers and preschool-age children shall play outdoors daily for a minimum of sixty (60) minutes. In inclement weather, active indoor play shall be substituted in safe play areas.
- C. Children ages twelve (12) months and older attending a full-day program shall be scheduled to participate in at least sixty (60) minutes of physical activity per day. Children attending less than a full day program shall be scheduled to participate in a proportionate amount of such activities.
- D. For children ages three (3) and older, at least thirty (30) of the sixty (60) minutes shall be structured and guided physical activity. Structured and guided physical activity shall be led by teachers and/or caregivers and shall promote moderate to vigorous physical activity, basic movement, creative movement, motor skills development, and general coordination.
- E. Infants should have supervised "tummy time" every day when they are awake. Caregivers should interact with an awake infant on their tummy for short periods of time (three (3) to five (5) minutes), increasing the amount of time as the infant shows he/she enjoys the activity.
- F. Toddlers and preschool-age children shall not be sedentary or sit passively for more than sixty (60) minutes continuously, except when sleeping.
- G. Infants shall be placed in safe settings that facilitate physical activity and do not restrict movement for more

than twenty (20) minutes at one (1) time (seated position, swings, exer-saucers, etc.), promote the development of movement skills, and allow infants to perform small and large muscle activities. A least restrictive environment is encouraged at all times.

- H. Facilities shall document physical activities including outdoor time, active play, and routine physical activity, and make such documentation available to the Health Department at designated times. This documentation shall be included in the program daily schedule and program lesson/activity plans.

15-0811. ELECTRONIC MEDIA VIEWING.

- A. Electronic media shall not be used with children under two (2) years of age.
- B. For children ages two (2) and older, viewing of electronic media shall be limited to no more than sixty (60) minutes per day of educational programs or programs that actively engage child movement. Children attending less than a full day program shall be limited to a proportionate amount of such viewing.

15-0812. BEVERAGES.

- A. Beverages with added sweeteners, whether artificial or natural, shall not be provided to children.
- B. Juice shall only be provided to children twelve (12) months and older, and shall not be provided in a bottle. Only one hundred percent (100%) juice shall be permitted and children shall receive no more than six (6) ounces per day.
- C. Water shall be made available and shall be easily accessible throughout the day.

CHAPTER 15-09

PET STORES

SECTIONS:

- 15-0901. Definitions.
- 15-0902. Unlawful to Operate Pet Store Without License - Sale or Display of Colored Birds or Animals Prohibited.
- 15-0903. License to Operate Pet Store Issued Annually - Fee - Application Form - Health Department to Enforce Regulations.
- 15-0904. Inspection of Licensed Premises.
- 15-0905. Cruelty to Pet Birds, Animals, and Fowl Prohibited.
- 15-0906. Pet Birds or Animals Shall be Provided with Clean and Proper Food and Water.
- 15-0907. Licenses - Termination, Suspension, Revocation.

15-0901. DEFINITIONS. As used in this ordinance, unless the context otherwise indicates, the following definitions shall apply:

- A. "Animals" shall include any non-human vertebrate species housed, offered for sale or adoption, or both, in a pet store, including, but not limited to, mammals, birds, reptiles, amphibians, fish, and also invertebrates housed, sold, or adopted as pets, except worms, leeches or the like sold for fishing bait.
- B. "Pet store" shall mean an establishment or market place where animals are bought, sold, exchanged, or offered for sale, in any single calendar year, to the general public with the intent of making a profit. This term includes the keeping for transfer or the transfer of animals at temporary facilities, such as flea markets, mobile facilities, department stores, merchandise outlets, discount outlets, animal shows conducting a sale, and other types of retail outlets where the animals are intended as companions or household animals. The term "pet store" shall not include a person, firm, company, or corporation which sells, offers for sale, or exchanges less than 25 pet animals in any single calendar year, nor which keeps lost or homeless pet animals for the purpose of locating the existing owner of the pet animals or a new owner and which recoups solely expenses incurred in caring for said pet animal.
- C. "Health Department" shall mean the Fargo Cass Public Health Department and its authorized designees and representatives.

15-0902. UNLAWFUL TO OPERATE PET STORE WITHOUT LICENSE - SALE OR DISPLAY OF ARTIFICIALLY COLORED BIRDS OR ANIMALS PROHIBITED. It shall be unlawful to operate a pet store unless a license is first obtained from the Health Department. No artificially colored birds or animals shall be sold or displayed by any person at any time.

15-0903. LICENSE TO OPERATE PET STORE ISSUED ANNUALLY - FEE - APPLICATION FORM - HEALTH DEPARTMENT TO ENFORCE REGULATIONS. The license mentioned in Section 15-0902 hereof shall be issued annually, January 1, by the Health Department after an inspection. The fee shall be as established by the Health Department, and the applicants shall fill in and sign an application form furnished by the Health Department.

The Health Department is authorized to promulgate regulations creating minimum standards for pet stores pertaining to the facilities for housing and maintenance of animals, requirements for feeding and watering animals, sanitary conditions for animals, disease control and medical care, record keeping requirements and minimum age requirements of animals to be sold, which regulations will be enforced by the Health Department.

15-0904. INSPECTION OF LICENSED PREMISES. The members of the Board of City Commissioners of the City of West Fargo, the Chief of Police, or any officer of the Health or Police Department may, at any time, enter upon any licensed premises for the purpose of inspection or to determine whether the licensed premises are in compliance with any and all ordinances of the City.

15-0905. CRUELTY TO ANIMALS PROHIBITED. It shall be unlawful for any person within the City to beat, injure, mistreat, or otherwise abuse inhumanely, unnecessarily, or cruelly any animal.

15-0906. ANIMALS SHALL BE PROVIDED WITH CLEAN AND PROPER FOOD AND WATER. All animals kept for sale or display or any other purpose shall be provided with suitable sanitary housing with clean and proper food and water available at all times.

15-0907. LICENSES - TERMINATION, SUSPENSION, REVOCATION. All licenses issued under the provisions of this chapter, unless otherwise specifically provided, shall terminate on December 31 following the date of issuance; provided, however, that any license issued under the provisions of this chapter may, under certain circumstances, be terminated, suspended or revoked by the Health Department.

A. The Health Department may, in its discretion, suspend or revoke for cause any license issued under the provisions of this chapter. The grounds for suspension or revocation shall, among others, include the following:

1. The licensee has filed a petition in bankruptcy.

2. An individual licensee, one of the partners in a partnership licensee, or one of the officers in a corporation or limited liability licensee, or any individual in active management of the licensed business is determined to have violated any of the provisions of this chapter.
 3. The licensee has been convicted of a felony under the laws of the United States or under the laws of one of the several states.
 4. The licensee has made any false statement in his application for a license.
 5. The licensee has violated one or more of the regulations pursuant to Section 15-0903.
- B. The grounds enumerated in Subsection A of this section shall not be deemed to be exclusive, and any license issued under the provisions of this chapter may be suspended or revoked by the Health Department for any other reason deemed by the Health Department to be sufficient in order to promote and protect the health, safety, and humane treatment of animals in the care of the licensees. When any license is suspended or revoked by the Health Department pursuant to the provisions of this section, or when the licensee voluntarily ceases business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.
- C. No license issued under the provisions of this chapter shall be suspended or revoked for cause by the Health Department without a public hearing. In the event that the Health Department intends to consider the suspension or revocation of any license for cause, it shall notify the licensee of its intention to consider the same. The notice shall specify the time and place of the suspension or revocation hearing and shall be served upon the licensee or his managing agent in the same manner as provided by law for the service of a summons in a civil action. No suspension or revocation hearing shall be held before the expiration of 15 days after the date of the service of the notice upon the licensee.

If, upon such hearing, it appears to the Health Department that sufficient cause exists for the suspension or revocation of a license issued pursuant to the provisions of this chapter, the Health Department shall make its order suspending or revoking the said license.

- D. An order suspending or revoking a license issued pursuant to the provision of this chapter may be appealed to the

Health Department. The licensee must give notice of its intent to appeal the order of suspension or revocation to the Health Department no later than 15 days following the date of the service of the order upon him.

CHAPTER 15-10

REGULATIONS RELATING TO CLEANUP OF CLANDESTINE DRUG LAB SITES AND CHEMICAL DUMP SITES

SECTIONS:

- 15-1001. Purpose and Intent.
- 15-1002. Jurisdiction.
- 15-1003. Fees.
- 15-1004. Definitions.
- 15-1005. Existence of Clandestine Drug Lab Site or Chemical Dump Site - Observation During Law Enforcement Investigation or by Other Officials in Regular Course of Duties.
- 15-1006. Declaration of Property as a Public Health Nuisance - Order to Vacate the Premises.
- 15-1007. Issuance of Order to Abate Public Health Nuisance - Notice.
- 15-1008. Notice of Declaration and Order of Abatement - Notice to Concerned Parties.
- 15-1009. Site Owner's Right to Appeal.
- 15-1010. Site Owner's Responsibility to Abate Public Health Nuisance - Required Action.
- 15-1011. Duty to Notify Health Officer of Prospective Change in Ownership.
- 15-1012. Site Owner's Responsibility for Costs.
- 15-1013. Site Owner's Failure to Abate Public Health Nuisance - City's Authority to Abate.
- 15-1014. Notice Filed with Property Record and/or Motor Vehicle Record.
- 15-1015. Recovery of Costs by City.
- 15-1016. Recovery of Costs from Persons Causing Damage.
- 15-1017. Site Owner and Address.
- 15-1018. Occupation Prohibited.
- 15-1019. Removal of Personal Property From the Site.
- 15-1020. Removal of Posted Declaration of Public Health Nuisance.
- 15-1021. Health Officer's Authority to Modify or Remove Declaration of Public Health Nuisance or Order for Abatement.
- 15-1022. Violations and Penalties.

15-1001. PURPOSE AND INTENT. The purpose of this chapter is to reduce public exposure to health risks where law enforcement officers or other city officials have determined that hazardous chemicals from a suspected clandestine drug lab site or associated dumpsite may exist. The Board of City Commissioners finds that such sites may contain suspected chemicals and residues that place people, particularly children or adults of child bearing age, at risk when

exposed through inhabiting or visiting the site, now and in the future.

15-1002. JURISDICTION. This ordinance shall apply to all areas located within the city limits of West Fargo.

15-1003. FEES. Fees for the administration of this chapter may be established and amended periodically by resolution of the Board of City Commissioners.

15-1004. DEFINITIONS. In this chapter, unless the context otherwise requires:

- A. "Child" shall mean any person less than eighteen (18) years of age.
- B. "Chemical dumpsite" shall mean any place or area, including any motor vehicle, trailer or boat, where chemicals or other waste materials used in a clandestine drug lab have been located.
- C. "Chemical investigation site" shall mean a clandestine drug lab site that is under notice and order for cleanup and/or remediation as a public health nuisance, as determined by the health officer, or his designee.
- D. "Clandestine drug lab" shall mean the unlawful manufacture or attempt to manufacture controlled substances or the possession of equipment and other items commonly used to manufacture controlled substances.
- E. "Clandestine drug lab site" shall mean any place or area where law enforcement has determined that conditions associated with the operation of an unlawful clandestine drug lab exist. A clandestine drug lab site may include dwellings, accessory buildings, accessory structures, a chemical dumpsite, any tract of land, or any motor vehicle, trailer or boat where conditions associated with the operation of an unlawful clandestine drug lab exist.
- F. "Cleanup" shall mean removal and/or containment of substances hazardous to humans and/or the environment at a chemical investigation site.
- G. "Controlled substance" shall mean a drug, substance, or immediate precursor in Schedules I through V as set forth in North Dakota Century Code Chapter 19-03.1. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.
- H. "Director of Public Health" shall mean the Director of the Health Department.

- I. "Health Officer" shall mean the local Health Officer for the Health Department and his designees.
- J. "Health Department" shall mean Fargo Cass Public Health Department and its authorized designees and representatives.
- K. "Household hazardous waste" shall mean waste generated from a clandestine drug lab. Such wastes shall be treated, stored, transported, or disposed of in a manner consistent with North Dakota Department of Health, North Dakota Department of Environmental Health, Cass County Health rules and regulations.
- L. "Law enforcement officer" shall mean any licensed peace officer.
- M. "Manufacture, in places other than a pharmacy" shall mean and include the production, cultivation, quality control, and standardization, by mechanical, physical, chemical or pharmaceutical means, packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or by other process, of drugs.
- N. "Owner" shall mean any person, firm, or corporation who owns, in whole or in part, the land, building, structure, motor vehicle, trailer or boat associated with a clandestine drug lab site or chemical dumpsite.
- O. "Public health nuisance" shall mean any dwelling, accessory structure, building and/or adjacent property, or motor vehicle, trailer or boat associated with a clandestine drug lab site are create a potential threat to the public health, safety, and welfare of the citizens of West Fargo and hereby declared to be a public health nuisance.
- P. "Remediation" shall mean methods such as assessment, evaluation, testing, venting, detergent scrubbing, enclosure, encapsulation, demolition, quarantine, and/or removal of contaminated materials from a chemical investigation site.
- Q. "Site" shall mean the location, area, building, motor vehicle, trailer or boat, where items typically associated with a chemical dumpsite, chemical investigative site, or clandestine drug lab are located or found.
- R. "Site owner" shall mean any person, firm, or corporation who owns, in whole or in part, the land, building, structure, motor vehicle, trailer or boat associated with a clandestine drug lab site or chemical dumpsite.

- S. "Structure" shall mean a dwelling, building, motor vehicle, trailer, boat, ice fishing house, appliance or any other area or location, either fixed or temporary.

15-1005. EXISTENCE OF CLANDESTINE DRUG LAB SITE OR CHEMICAL DUMP SITE - OBSERVATION DURING LAW ENFORCEMENT INVESTIGATION OR BY OTHER CITIES OFFICIALS IN REGULAR COURSE OF DUTIES. Law enforcement officers as part of a criminal investigation or caretaking public service function, or other city officials in the regular course of their duties, who identify or observe conditions associated with a clandestine drug lab site or chemical dump site that places neighbors, visiting public, or present and future occupants of the affected property at risk for exposure to harmful contaminants and other associated conditions, shall notify public health authorities and other pertinent agencies of the site location, property owner if known, and conditions found at the site.

When law enforcement officers or other city officials have completed their work and are prepared to leave the site, they shall post a warning sign on the entrance of the affected part of the structure. In a situation involving a vehicle, such warning sign shall be clearly posted on the vehicle. The warning sign shall be of a size and contain information sufficient to alert visitors or returning occupants to the site that the area is a chemical investigation site, may be dangerous to enter, and must not be entered except by authorization of the Health Department, health officer, or law enforcement agency identified on the sign. Upon receiving information related to conditions associated with a clandestine drug lab site or chemical dump site, the Health Department shall conduct an appropriate investigation of the site.

15-1006. DECLARATION OF PROPERTY AS A PUBLIC HEALTH NUISANCE - ORDER TO VACATE THE PREMISES. If law enforcement or public health authorities confirm the presence or existence of a clandestine drug lab site or chemical dumpsite, the property shall be deemed a public health nuisance. Following an inspection by the health officer and/or his designee confirming the presence of a clandestine drug lab site or chemical dumpsite, the health officer shall issue a declaration of public health nuisance for the affected site, identifying the site as a public health nuisance and declaring the site as unsafe to occupy. As part of this declaration, the health officer shall have authority to order all occupants of such building, structure, or any part thereof to immediately vacate the premises. A copy of the declaration shall be posted on doorway entrances to the site or, in the case of bare land, in several conspicuous places on the property. In a situation involving a vehicle, a copy of the declaration shall be clearly posted on die vehicle.

The declaration of public health nuisance shall not expire until the property owner completes cleanup and remediation efforts related to the property as provided for in this ordinance.

15-1007. ISSUANCE OF ORDER TO ABATE PUBLIC HEALTH NUISANCE - NOTICE. Upon issuance of a declaration of public health nuisance, the health officer shall issue an order of abatement for the affected site. A copy of the order for abatement shall be posted on all doorway entrances to the site, or in the case of bare land, the order shall be posted in several conspicuous places on the property. In a situation involving a vehicle, a copy of the order for abatement shall be clearly posted on the vehicle. The health officer shall send personal or written notice to the site owner of the order to abate, which shall include the following:

- A. A copy of the abatement order;
- B. Information about the potentially hazardous condition of the site;
- C. Notification of suspension of the site's rental license if applicable;
- D. A summary of the site owner's and occupant's responsibilities under this ordinance; and
- E. Information that can help the owner locate appropriate services necessary to abate the public health nuisance.

15-1008. NOTICE OF DECLARATION AND ORDER OF ABATEMENT - NOTICE TO CONCERNED PARTIES. The health officer shall notify the owner of the property in person or by mail of the declaration of public health nuisance and order of abatement along with the following parties:

- A. Occupants of the property;
- B. Neighbors at probable risk;
- C. West Fargo Police Department; and
- D. North Dakota Department of Health and other State and local authorities which are known to have public and environmental protection responsibilities that are applicable to the situation.

Such notice shall include information related to the following:

- A. Property location by street address and other identifiable location;
- B. Property owner's and occupant's identities - especially the identities of any children and women of child-bearing age found or known to be associated with the site;
- C. Chemicals found and indications of chemical residues; and

D. Presumed duration of the lab.

15-1009. SITE OWNER'S RIGHT TO APPEAL. The site owner may appeal the declaration of public health nuisance and related order for abatement to the Board of City Commissioners. Such appeal must be made in writing and filed with the City Auditor before the deadline when the site owner is otherwise required to submit a cleanup/remediation plan as required under section 15-1010.

15-1010. SITE OWNER'S RESPONSIBILITY TO ABATE PUBLIC HEALTH NUISANCE - REQUIRED ACTION. Within twenty (20) business days of the date the abatement order is mailed or personally served upon the site owner, the site owner shall accomplish the following:

- A. Notify the health officer that he has confirmed that all persons and their pets have vacated the site and that the site will remain vacated and secured until the public health nuisance is completely abated as required by this ordinance;
- B. Contract with one or more City-approved environmental hazard testing and cleaning firms to conduct the following work according to the most the current North Dakota Department of Health Management Practices for Cleanup of Methamphetamine Labs, or according to standards and regulations as may be adopted by the North Dakota Department of Health:
 - 1. A detailed on-site assessment of the extent of contamination at the site and the contamination of the personal property therein;
 - 2. Soil testing of the site and testing of all property and soil in proximity to the site that the environmental hazard testing and cleaning firm determines may have been affected by the conditions found at the site;
 - 3. A complete cleanup of the site (including but not limited to the cleanup or removal of contaminated plumbing, ventilation systems, fixtures and contaminated soil) or a demolition of the site and a complete cleanup of the demolished site;
 - 4. A complete cleanup, or disposal at an approved dumpsite, of all personal property in the site;
 - 5. A complete cleanup of all property and soil in proximity to the site that is found to have been affected by the conditions found at the site;

6. Remediation testing and follow-up testing to determine that all health risks are sufficiently reduced, according to North Dakota Department of Health Management Practices for Cleanup of Methamphetamine Labs, or according to standards and regulations as may be adopted by the North Dakota Department of Health, to allow safe human occupancy and use of the site and use of the personal property therein.
- C. Provide the health officer with the contractor's plan and schedule for remediation;
 - D. Sign an agreement with the health officer concerning a cleanup and/or remediation schedule. The schedule shall establish reasonable deadlines for completing all actions required by this ordinance for abatement of the public health nuisance. In determining appropriate deadlines, the health officer shall consider practical limitations and the availability of contractors in approving the schedule for cleanup. The health officer may consider practical limitations and the availability of contractors in approving the schedule for cleanup;
 - E. Provide written documentation of the cleanup process, including a signed, written statement that the property is safe for human occupancy and that the cleanup was conducted according to North Dakota Department of Health Management Practices for Cleanup of Methamphetamine Labs, or according to standards and regulations as may be adopted by the North Dakota Department of Health;
 - F. The site owner may request an extension of time to consider options for arranging cleanup or removal of the affected parts of the structure. The owner or occupant must show good cause for any such extension. Such extension shall be dependent upon the owner's assurance that the affected parts of the structure will not be occupied pending appropriate cleanup or demolition.

15-1011. DUTY TO NOTIFY HEALTH OFFICER OF PROSPECTIVE CHANGE IN OWNERSHIP. During the time that an order of abatement is in effect for an affected site, the site owner shall inform the health officer of any prospective change in ownership of the affected site.

15-1012. SITE OWNER'S RESPONSIBILITY FOR COSTS. The site owner shall be responsible for all costs associated with nuisance abatement and of cleanup of the site, including contractor's fees and public costs for services that were performed in association with a clandestine drug lab site or chemical dump site cleanup. Public costs may include, but are not limited to:

- A. Posting of the site;
- B. Notification of affected parties;
- C. Securing the site, providing limited access to the site, and prosecution of unauthorized persons found at the site;
- D. Expenses related to the recovery of costs, including the assessment process;
- E. Laboratory fees;
- F. Cleanup services;
- G. Administrative fees; and
- H. Other associated costs.

15-1013. SITE OWNER'S FAILURE TO ABATE PUBLIC HEALTH NUISANCE - CITY'S AUTHORITY TO ABATE.

- A. If the site owner fails to organize and implement appropriate cleanup and remediation efforts within twenty (20) business days of the date the abatement order is mailed to the site owner, or if the site owner otherwise fails to comply with this ordinance, the health officer is authorized to proceed in a prompt manner and to take all reasonable actions necessary to abate the public health nuisance, including, but not limited to contracting with a City-approved environmental hazard testing and cleaning firm to conduct the work listed in section 15-1009.
- B. If the City is unable to locate the property owner within ten (10) days of the declaration of public health nuisance, the City is authorized to proceed in a prompt manner to initiate the onsite assessment and cleanup.
- C. If the estimated costs associated with cleanup and remediation of real or personal property at the site exceeds fifty percent (50%) of the County Assessor's market value of the structure and land, the City may exercise its authority under the Revised Ordinances of 1990 of the City of West Fargo, Chapter 5-02.

15-1014. NOTICE FILED WITH PROPERTY RECORD AND/OR MOTOR VEHICLE RECORD.

- A. If the site owner fails to organize and implement appropriate cleanup and remediation efforts within twenty (20) business days of the date the abatement order is mailed to the site owner, or if the site owner otherwise fails to comply with this ordinance, the health officer is

authorized to provide a copy of the declaration of public health nuisance and abatement order to the County Recorder and to the lien and/or mortgage holders of the affected site to help assure that persons with interest in the site have access to information about the declaration of public health nuisance.

- B. When the affected property is a motor vehicle, boat, or trailer, the health officer is authorized to notify the appropriate state and local agencies that maintain motor vehicle, boat, or trailer records, and the holders of liens or security interests against the vehicle or trailer, of the declaration of public health nuisance and order of abatement.

15-1015. RECOVERY OF COSTS BY CITY. If the City abates the public health nuisance, in addition to any other legal remedy, the City shall be entitled to recover all of its costs plus an additional 25% of the costs for administration. The City may recover costs by civil action against the owner of the site or by assessing such costs, together with any amendments or modifications thereto.

15-1016. RECOVERY OF COSTS FROM PERSONS CAUSING DAMAGE. No provisions of this ordinance are intended to limit the site owner's, residents' or the City's right to recover costs incurred under this ordinance from either the persons contributing to the public health nuisance, such as the operators of the clandestine drug lab, and/or from other lawful sources.

15-1017. SITE OWNER AND ADDRESS. For purposes of this chapter, when the site is real property and the owner or the address of the owner of the site is unknown, the owner and the owner's address is deemed to be that of the property's taxpayer's name and address as that information is maintained by the County Auditor's office. When the site is a vehicle, boat or trailer and the owner or the address of the owner of the site is unknown, the owner and the owner's address is deemed to be that of the person on file as the owner on the current or most recent title to the vehicle, boat or trailer.

15-1018. OCCUPATION PROHIBITED. It shall be unlawful for any person to occupy, enter, or allow occupancy or entrance to a building or structure declared a public health nuisance until such declaration is vacated or modified. In a situation involving a vehicle, it shall be unlawful for any person to enter or otherwise operate a motor vehicle declared a public health nuisance until such declaration is vacated or modified. This provision does not apply to the health officer, his designees, to law enforcement authorities, or other City officials.

15-1019. REMOVAL OF PERSONAL PROPERTY FROM THE SITE. While a declaration of public health nuisance has been posted at the site, no personal property may be removed from the site without prior written

consent from the Health Officer. Consent to remove personal property shall only be granted at the reasonable discretion of the Health Officer, and only in cases of hardship after:

- A. A City-approved environmental hazard testing and cleaning firm has advised the City, in writing, that the item(s) of personal property can be sufficiently cleaned to remove all harmful contamination; and
- B. The owner of the personal property agrees in writing:
 - 1. That the owner is aware of the danger of using the contaminated property;
 - 2. That the owner will thoroughly clean the property to remove all contamination before the property is used; and
 - 3. That the owner releases and agrees to indemnify the City, its staff, and the Board of City Commissioners from all liability to the owner and/or third persons for injuries or damages caused, or alleged to have been caused, by the contaminated property.

15-1020. REMOVAL OF POSTED DECLARATION OF PUBLIC HEALTH NUISANCE. It shall be unlawful for any person, except the Health Officer or other authorized City personnel, to remove or alter a posted declaration of public health nuisance or an order of abatement from a chemical dumpsite or a clandestine drug lab site.

15-1021. HEALTH OFFICER'S AUTHORITY TO MODIFY OR REMOVE DECLARATION OF PUBLIC HEALTH NUISANCE OR ORDER FOR ABATEMENT. The Health Officer may modify or remove the declaration of public health nuisance and related order for abatement. Such modification or removal shall only occur after the Health Officer receives documentation from a City-approved environmental hazard testing and cleaning firm stating that the suspected health and safety risks, including those to neighbors and potential dwelling occupants, either do not exist or have been sufficiently abated or corrected to justify amendment or removal of the declaration. In addition, prior to the Health Officer allowing occupancy of the site or structure, the site owner shall execute a covenant in recordable form identifying the property as a clandestine drug lab site which has been remediated and such covenant shall be recorded in the County Recorder's office. When the declaration or order of abatement is modified or removed, the Health Officer shall forward that information to the County Recorder to be included in the property record if notice of the nuisance declaration was previously filed with the County Recorder as described above. Notice shall also be provided to the motor vehicle or other license records agencies and lien holders if a notice had previously been provided to them.

15-1022. VIOLATIONS AND PENALTIES. Any person violating any provision of this ordinance shall be guilty of a class B misdemeanor and upon conviction shall be subject to the penalties set forth in Section 1-0211 of the Revised Ordinances of 1990 of the City of West Fargo. In addition, the City shall be entitled to seek any other remedy available at law or in equity in order to protect the health, safety, and welfare of the community, including temporary and permanent injunctions.

CHAPTER 15-11

SOFT-SERVE FREEZING/DISPENSING MACHINES

SECTIONS:

- 15-1101. Definitions.
- 15-1102. Sanitizing Machines and Examination of Product.
- 15-1103. Labeling.
- 15-1104. License.
- 15-1105. License Revocation or Suspension.
- 15-1106. Sale of Nonconforming Products Prohibited.
- 15-1107. Exemptions.
- 15-1108. License Fees.

15-1101. DEFINITIONS.

1. "Commissary" shall mean any place, premise, or establishment in which soft-serve freezing/dispensing machines manufacture, store, and sell soft-serve dairy and nondairy frozen dessert products.
2. "Dispensing only machine" shall mean a machine that does not mix or freeze a mixture but which only dispenses a prepackaged ready-to-use soft serve dessert product.
3. "Laboratory" shall mean a biological, physical or chemical laboratory which is under the supervision of the state or local health authority.
4. "License" shall mean a written authorization to operate issued by the Health Department.
5. "Manufacturer" shall mean any establishment operating a soft-serve freezing/dispensing machine.
6. "Health Department" shall mean Fargo Cass Public Health Department and its authorized designees and representatives.
7. "Soft-serve" shall mean the frozen combination of two (2) or more ingredients used in the manufacture of soft-serve dairy or nondairy dessert products, with or without fruit, fruit juices, candy, nuts, meats, flavoring, or coloring.
8. "Soft-serve freezing/dispensing machine" shall mean any mechanically operated freezing/dispensing machine used to produce a partially frozen dairy or nondairy dessert product combination of two (2) or more of the following:

milk or milk products, edible oil or fat, eggs or egg products, sugar, water, fruit or fruit juices, flavoring, candy, coloring, or stabilizer, and includes, but is not limited to, soft-serve desserts, ices, novelties, or other similar products.

9. "Soft-serve mix" shall mean the unfrozen combination of two (2) or more ingredients used in the manufacture of soft-serve dairy and nondairy dessert products.

15-1102. SANITIZING MACHINES AND EXAMINATION OF PRODUCT. Soft-serve freezing/dispensing machines must be cleaned and sanitized as often as necessary to maintain the quality of the frozen product. The Director of the Health Department may establish required frequency and methods for sampling and testing of soft serve freezing/dispensing machines and the acceptable standards for sanitary conditions. The licensee of a soft serve freezing/dispensing machine shall be responsible for maintaining sanitary conditions of the soft serve freezing/dispensing machine in compliance with approved standards. Soft serve freezing/dispensing machines shall be made available for testing by the Health Department during business hours for testing and determination of compliance with approved standards. If after sampling, a soft serve freezing/dispensing machine is out of compliance according to the Health Department, the operation of the machine may be immediately suspended until it meets the applicable Health Department standards.

15-1103. LABELING. All soft-serve dairy/nondairy products that are not sold at the point of manufactured origin must be properly labeled according to the current Food and Drug Administration guidelines.

15-1104. LICENSE. It shall be unlawful for any person who does not possess a valid license from the Health Department to sell, store, or offer for sale any soft-serve machine dairy/nondairy dessert product.

15-1105. LICENSE REVOCATION OR SUSPENSION. A license, as required by this chapter, may be suspended by the Health Department upon the violation by the holder of any part of this chapter. Any person whose license has been suspended shall immediately discontinue operation of the soft-serve machine until the defects that caused the suspension have been corrected. Following correction, the applicant may request reinstatement of the license by the Health Department.

The Health Department may require the license holder to demonstrate proper cleaning procedures and maintenance of the soft-serve freezing/dispensing machine before reinstating the license.

15-1106. SALE OF NONCONFORMING PRODUCTS PROHIBITED. No mix or soft-serve dairy/nondairy dessert shall be sold within the City

unless such mix or soft-serve dairy/nondairy dessert product has been manufactured and frozen in conformity with the requirements of this chapter. Milk and any milk product that is used in the manufacture of ice cream, frozen dairy dessert, frozen dessert, or sherbet shall be pasteurized. Ice cream mix, frozen dairy dessert mix, and frozen dessert mix are unfrozen products that are used in the manufacture of ice cream, frozen dairy dessert, or frozen dessert. They shall comply with all requirements for ice cream, frozen dairy dessert, or frozen dessert, respectively.

15-1107. EXEMPTIONS. The soft-serve freezing/dispensing machine program is concerned with the manufacture and freezing of soft-serve frozen desserts, including both dairy and nondairy products. The Health Department has determined that establishments freezing/dispensing nondairy ice beverage products exclusively, such as water ices, slush, frozen cappuccino, etc., or serving hard, hand-dipped ice cream, or dispensing only machines which dispense a prepackaged ready-to-use frozen dessert do not require a soft-serve freezing/dispensing machine license.

15-1108. LICENSE FEES. Any person, firm, or corporation that operates a soft-serve freezing/dispensing machine shall pay an annual license fee in an amount which shall be established by the Health Department. All such fees shall be paid to the City by the person, firm, or corporation licensed to operate a soft-serve freezing/dispensing machine as defined in this ordinance, said fees to be paid before the license is issued.

CHAPTER 15-12

HOTELS AND MOTELS

SECTIONS:

- 15-1201. Definitions.
- 15-1202. Health Department.
- 15-1203. Exterior Area.
- 15-1204. Public Restrooms and Handwashing Facilities.
- 15-1205. Guest Rooms.
- 15-1206. Hallways, Lobbies, Laundry Rooms, and Storage Rooms.
- 15-1207. Water System.
- 15-1208. Plumbing.
- 15-1209. Garbage and Refuse Disposal.
- 15-1210. Miscellaneous.

15-1201. DEFINITIONS. The following definitions shall apply in the interpretation and enforcement of this chapter.

1. "Clean" shall mean the absence of dirt, grease, rubbish, garbage, and other offensive, unsightly or extraneous matter.
2. "Employee" shall mean any person working in a hotel or motel including janitors, maids, porters, and other persons whose duties include the cleaning of rooms, toilets, or other parts of the building.
3. "Good repair" shall mean free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions, and similar defects so as to constitute a good and sound condition.
4. "Guest" shall mean an occupant of any hotel or motel.
5. "Guest room" shall mean any room used by a guest for sleeping purposes.
6. "Health Department" shall mean the Fargo Cass Public Health Department and its authorized designees and representatives.
7. "Health hazard" shall mean any chemical agent, source of filth, cause of sickness, or condition that is a health threat to employees or guests.
8. "Hotel or motel" shall mean a building, structure, enclosure, or any part thereof used as, maintained as, advertised as, or held out to be a place where sleeping

accommodations are furnished to the public for periods of less than one (1) week.

9. "Public restroom" shall mean any facility that provides toilet and handwashing facilities for the general public.

15-1202. HEALTH DEPARTMENT.

1. Regulation by Health Department - The Health Department, and agents and employees thereof, shall have authority to regulate the public health and safety in the City of West Fargo concerning use, design, operation, and maintenance of hotels and motels and shall have such authority to adopt regulations, rules, standards, and practices. Such regulations, rules, standards, and practices shall be approved by the Health Department, are hereby adopted by reference and fully incorporated herein, included any amendments hereinafter adopted, and shall be controlling within the jurisdiction of the Health Department.
2. Health Department Approval of Construction Plans - Before work is commenced on the construction of a hotel or motel, or any alteration, addition, remodeling, or other improvement, the plans and specifications must be approved by the Health Department.
3. Inspection by Health Department - The Health Department may inspect or cause to be inspected all hotels and motels within the City at such times as it may deem necessary to carry out the intent of this ordinance. In the event of the failure of compliance after due notice with the rules, regulations, and requirements of this ordinance, the Health Department shall have the power to abate or cause a suspension of use of such hotel or motel until such time as the Health Department deems there to be no longer a menace or a hazard to health, safety, or morals. Annual license fees will be set by the Health Department.

15-1203. EXTERIOR AREA.

1. Every building, structure, or enclosure used to provide lodging accommodations for the public shall be kept in good repair, and so maintained as to promote the health, comfort, safety, and well being of persons accommodated.
2. There shall be at least one (1) parking spot provided for each lodging room in the hotel or motel and for all staff. The parking lot and all property used in connection with the hotel or motel shall be kept free of litter and refuse. Walking and driving surfaces of all exterior areas shall be surfaced with concrete, asphalt, or a similar material effectively treated to facilitate maintenance and minimize

dust. These surfaces shall be graded to prevent pooling. Only articles necessary for the operation and maintenance of the establishment shall be stored on the premises.

3. Outside openings shall be protected against the entrance of insects and rodents by tight fitting, self closing doors, closed windows, screening, or other approved means. Screen doors shall be self closing, and screen for windows, doors, skylights, intake and exhaust air ducts, and other openings to the outside shall be tight fitting and free of breaks or holes. Screening materials shall not be less than sixteen (16) mesh to the inch.

15-1204. PUBLIC RESTROOMS AND HANDWASHING FACILITIES.

1. All public restrooms should be provided with mechanical ventilation, self closing doors, and proper handwashing facilities. The handwashing sink shall be equipped with self-dispensing soap and self-dispensing disposable towels or a hand drying device providing heated air and a suitable waste receptacle. Handwashing sinks shall also provide hot and cold water tempered by means of a mixing valve or combination faucet. Hot water shall not exceed one hundred thirty degrees (130° F). Any self-closing, slow closing, or metering faucet shall be designed to provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet.
2. Restroom facilities shall be conveniently located and shall be accessible to employees and guests at all times.
3. Handwashing facilities, soap dispensers, hand drying devices, and all related fixtures shall be kept clean and in good repair.
4. Walls and floors in restrooms shall be constructed of smooth, easily cleanable materials and shall be kept clean and in good repair.

15-1205. GUEST ROOMS.

1. Walls and floors in guest rooms shall be constructed of smooth, easily cleanable materials and shall be kept clean and in good repair. This includes furniture, drapes, curtains, lamp shades, carpeting, and all other fixtures.
2. All beds, bunks, cots, and other sleeping places provided for guests in hotels and motels shall be supplied with suitable pillow slips and top sheets. All bedding including mattresses, quilts, blankets, pillows, sheets, spreads, and all bath linen shall be kept clean. No bedding including mattresses, quilts, blankets, pillows,

and bed and bath linen shall be used which are worn out or unfit for further use. Pillow slips, sheets, and bath linen after being used by one (1) guest shall be washed before they are used by another guest, a clean set being furnished each succeeding guest. For any guest occupying a guest room for an extended period of time, a fresh set of sheets and pillow slips shall be furnished at least once each week, and at least two (2) clean towels per guest each day if they are requested.

3. Each hotel or motel must provide toilet, handwashing, and bathing facilities for its guests. There must be a ratio of at least one (1) toilet and bathing facility for every eight (8) guests. These facilities must be maintained in good repair and cleaned at least between stays of different guests. All toilet and bathing facilities must also be well ventilated. An area is well ventilated when excessive heat, odors, fumes, vapors, smoke, or condensation is reduced to a negligible level and barely perceptible to the normal senses.
4. All guest rooms must have a heating system able to maintain a minimum temperature of sixty-seven degrees Fahrenheit (67°F).
5. The doors of all guest rooms used for sleeping in any hotel or motel shall be equipped with proper bolts or locks to permit the occupants to lock or bolt such doors securely from within the rooms. Such bolts or locks shall be constructed in a manner which will render it impossible to unbolt or unlock the door from the outside.

15-1206. HALLWAYS, LOBBIES, LAUNDRY ROOMS, AND STORAGE ROOMS.

1. Walls, floors, and ceilings in hallways, lobbies, and laundry rooms shall be constructed of smooth, easily cleanable materials and shall be kept clean and in good repair.
2. All laundry rooms and any other rooms used to store linen, cribs, roll away beds, food, or food service equipment must shield all lights or use shatterproof bulbs.

15-1207. WATER SYSTEM.

1. A safe, adequate supply of potable water, with both hot and cold, under pressure shall be provided in all bathrooms and toilets.
2. Guest room glasses must be single service or multi-use glasses that are cleaned and sanitized between each different guest.

3. Self-service ice provided for guests must be dispensed through the use of self-dispensing ice machines or prepackaged from an approved source. Self-service ice storage bins are not acceptable for guest use and must be kept in areas not accessible to guests. All self-dispensing ice machines shall be cleaned internally every quarter (3 months).

15-1208. PLUMBING.

1. All plumbing shall be properly maintained and meet all state and local plumbing codes.

15-1209. GARBAGE AND REFUSE DISPOSAL.

1. All liquid waste shall be disposed of in an approved public sewage system.
2. Prior to removal, all garbage and refuse in storage shall be kept in watertight, nonabsorbent receptacles which are covered with close fitting lids to prevent access to birds, rodents, and other vermin. These garbage receptacles shall be kept in good repair.
3. All garbage, trash, and refuse shall be removed from the premises frequently to prevent nuisance and unsightly conditions, and shall be disposed of in a sanitary manner.

15-1210. MISCELLANEOUS.

1. All cleaning operations must be conducted in a manner that minimizes contamination of the facility. Cleaning equipment, supplies, insecticides, paints, and other toxic materials must be stored properly. They may not be stored above or next to linens, food, or food service equipment. All cleaners, sanitizers, and disinfectants must comply with 21 CFR Section 178.1010. An ingredient label and "direction for use" label on each chemical being used must be readily available for reference or inspection. All containers used for dispensing these chemicals must be prominently and distinctively labeled for identification of contents.
2. Every hotel and motel shall be constructed, maintained, and equipped to prevent the entrance, harborage, or breeding of flies, roaches, bedbugs, rats, mice, and all other insects and vermin. They must also have means necessary to eliminate such pests such as cleaning, renovation, or fumigation. The Health Department may order the facility to hire a licensed exterminator to exterminate pests when:

- A. The infestation is so extensive that it is unlikely that a nonprofessional can eradicate the pests effectively.
- B. The extermination method of choice can only be carried out by a licensed exterminator.
- C. Upon reinspection it is found that the establishment has not been brought into compliance with a prior order to rid the establishment of pests.

CHAPTER 15-13

TATTOOS, BODY ART AND BODY PIERCING

Section:

- 15-1301. Definitions.
 - 15-1302. Regulation by Health Department.
 - 15-1303. Health Department Approval of Construction Plans.
 - 15-1304. Unlawful to Operate Body Art Establishment Without License - Exemptions.
 - 15-1305. License to Operate Body Art Establishment Issued Annually - Fee - Application Form - Display of License Required - Adoption of Regulations.
 - 15-1306. Inspections by Health Department.
 - 15-1307. Licenses - Termination, Suspension, Revocation.
 - 15-1308. Unlawful Practices.
 - 15-1309. Penalty.
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15-1301. DEFINITIONS. As used in this ordinance, unless the context otherwise indicates, the following definitions shall apply:

1. "Body art" shall mean the practice of physical body adornment by licensed establishments and operators using, but not limited to, the following techniques: body piercing, tattooing, cosmetic tattooing, branding, and scarification.
2. "Body art establishment" shall mean any place or premise where the practices of body art, whether or not for profit, are performed, except where such practices are performed by a physician or surgeon who has a current license for the practice of medicine issued by the State of North Dakota pursuant to Chapter 43-17 of the North Dakota Century Code.
3. "Body piercing" shall mean puncturing or penetration of the skin of a person with pre-sterilized single-use needles and the insertion of pre-sterilized jewelry or other adornment thereto in the opening, except that puncturing the outer perimeter or lobe of the ear with a pre-sterilized single-use stud-and-clasp ear-piercing system shall not be included in this definition.
4. "Public Health Department" shall mean Fargo Cass Public Health Department and its authorized designees and representatives.
5. "Ear Piercing" shall mean the puncturing of the non-cartilaginous perimeter or lobe of the ear with a pre-sterilized, single-use, stud-and-clasp ear-piercing system following manufacturer's instructions.

6. "Operator" shall mean any person who controls, operates, manages, conducts, or practices body art activities at a body art establishment. The term includes an assistant or technician who performs body art activities and who works under the supervision, control, or authority of somebody else who is an operator.
7. "Person" shall mean an individual, any form of business or social organization, or any other non-governmental legal entity, including but not limited to corporations, partnerships, limited-liability companies, trusts, or unincorporated organizations.
8. "Physician" shall mean a person currently licensed by the State of North Dakota to practice medicine pursuant to the provisions of Chapter 43-17 of the North Dakota Century Code.
9. "Tattooing" shall mean any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This term includes all forms of cosmetic tattooing.
10. "Temporary body art event" shall mean any event to promote body art which lasts fewer than five (5) days.

15-1302. REGULATION BY HEALTH DEPARTMENT. The Health Department, its agents and employees, shall have authority to regulate the public health and safety in the City of West Fargo concerning use, design, operation, and maintenance of body art establishments and shall have such authority to adopt regulations, rules, standards, and practices. Such regulations, rules, standards, and practices shall be approved by the Health Department, are hereby adopted by reference, and fully incorporated herein, including any amendments hereinafter adopted, and shall be controlling within the jurisdiction of the Health Department.

15-1303. HEALTH DEPARTMENT APPROVAL OF CONSTRUCTION PLANS. Before work is commenced on the construction of a body art establishment, the plans and specifications must be approved by the Health Department.

15-1304. UNLAWFUL TO OPERATE BODY ART ESTABLISHMENT WITHOUT LICENSE - EXEMPTIONS. It shall be unlawful to operate a body art establishment unless a license is first obtained from the Health Department. The provisions of this chapter do not apply to physicians nor to individuals who pierce only the non-cartilaginous perimeter and lobe of the ear with a pre-sterilized, single-use, stud-and-clasp ear-piercing system; provided, however, that such

individuals shall not be exempt from the applicable U.S. Food and Drug Administration requirements.

15-1305. LICENSE TO OPERATE BODY ART ESTABLISHMENT ISSUED ANNUALLY - FEE - APPLICATION FORM - DISPLAY OF PERMIT REQUIRED - ADOPTION OF REGULATIONS. The license described in Section 15-1304 hereof shall be issued annually by the Health Department after an inspection and approval of the proposed body art establishment by the Health Officer or his designee. The fee therefor shall be as established by the Health Department, and applicants shall fill in and sign an application form furnished by the Health Department. The license shall be non-transferable and displayed prominently in the body art establishment where it may be readily observed by clients.

Each individual body art technician shall be required to first obtain a license from the Health Department. The fee therefor shall be established by the Health Department, and applicants shall complete and sign an application form furnished by the Health Department. Each individual body art technician must be working under a permitted body art establishment. If the body art establishment has only one (1) technician, only the establishment license needs to be obtained.

Body art establishments and body art technicians not otherwise licensed in the City who wish to practice body art at a temporary body art event, shall obtain a temporary license through the Health Department. The fee therefor shall be established by the Health Department, and the applicant shall complete and sign an application form furnished by the Health Department.

15-1306. INSPECTIONS OF LICENSED PREMISES. The Chief of Police, any officer of the police department, or any health officer of the Health Department may, at any time, enter upon any licensed premises for the purpose of inspection or to determine whether the licensed premises are in compliance with any and all ordinances and regulations adopted by the City of West Fargo. A copy of the inspection report must be furnished to the license holder or operator of the body art establishment.

15-1307. LICENSES - TERMINATION, SUSPENSION, REVOCATION. All licenses issued under the provisions of this chapter, unless otherwise specifically provided, shall terminate on December 31 following the date of issuance; provided, however, that any license issued under the provisions of this chapter may, under certain circumstances, be terminated, suspended, or revoked by the Health Department.

1. The Health Department may, in its discretion, suspend or revoke for cause any license issued under the provisions of this chapter. The grounds for suspension or revocation shall, among others, include the following:

- a. The licensee has filed a petition in bankruptcy.
 - b. The licensee does not remit the annual renewal fee.
 - c. An individual licensee, one (1) of the partners in a partnership licensee, or one of the officers in a corporation licensee, or any individual in active management of the licensed business is convicted of violating any of the provisions of this chapter.
 - d. The licensee has been convicted of a felony under the laws of the United States or under the laws of one (1) of the several states.
 - e. The licensee has made any false statement in his application for a license.
 - f. The licensee has demonstrated gross incompetence and/or has violated one (1) or more of the regulations created pursuant to Section 15-1305.
 - g. The licensee interferes with the Health Department or its agents and assistants in the performance of its duties.
2. The Health Department may temporarily suspend the license and order the establishment immediately closed if immediate danger to the public health or safety is found, unless the danger is immediately corrected.
 3. The grounds enumerated in subsection 1 of this section shall not be deemed to be exclusive, and any license issued under the provisions of this chapter may be suspended or revoked by the Health Department for any other reason deemed by the Health Department to be sufficient in order to promote and protect the health, safety, and welfare of the public. When any license is suspended or revoked by the Health Department pursuant to the provisions of this section, or when the licensee voluntarily ceases business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through the licensee.
 4. No license issued under the provisions of this chapter shall be suspended or revoked for cause by the Health Department without a public hearing. In the event that the Health Department intends to consider the suspension or revocation of any license for cause, it shall notify the licensee of its intention to consider the same. The notice shall specify the time and place of the suspension or revocation hearing and shall be served upon the licensee or his managing agent in the same manner as provided by law

for the service of a summons in a civil action. No suspension or revocation hearing shall be held before the expiration of fifteen (15) days after the date of the service of the notice upon the licensee.

If, upon such hearing, it appears to the Health Department that sufficient cause exists for the suspension or revocation of a license issued pursuant to the provisions of this chapter, the Health Department shall make its order suspending or revoking the said permit.

15-1308. UNLAWFUL PRACTICES. In addition to such other prohibitions as are contained in this chapter:

1. No person shall perform body art on any body part of a person under the age of eighteen (18) without the written consent of the parent or legal guardian of such minor and without said parent or legal guardian being present during such procedure.
2. No person shall obtain or attempt to obtain any body art establishment license by means of fraud, misrepresentation, or concealment.
3. No person shall perform body art procedures unless such procedures are performed in a body art establishment with a current license.
4. No person shall perform body art procedures unless they are at least eighteen (18) years of age.
5. No person shall interfere with an appropriate enforcement officer in the performance of an inspection or in the performance of any other duties.
6. Willful failure by the licensee to post regulations which are required to be posted pursuant to Section 15-1305 of this chapter shall be unlawful.

15-1309. PENALTY. A person who willfully violates this ordinance is guilty of an infraction. Every person, firm, or corporation violating this ordinance shall be punished by a fine not to exceed \$1,000; the court to have power to suspend said sentence and to revoke the suspension thereof.

CHAPTER 15-14

NOISE CONTROL

Source: Ord. 1095, Sec. 1 (2017)

SECTIONS:

- 15-1401. Definitions.
- 15-1402. Unnecessary Noise Prohibited.
- 15-1403. Unlawful Noise - Determination.
- 15-1404. Projection of Sound Unlawful.
- 15-1405. Exemptions.
- 15-1406. Application for Special Permit.
- 15-1407. Motor Sports Facilities.
- 15-1408. Enforcement and Penalty.
- 15-1409. Severability.

15-1401. DEFINITIONS. For purposes of this chapter, certain words and phrases used herein are defined as follows:

1. "Ambient noise" is the all-encompassing noise associated with a given environment, being usually composite of sounds from many sources, near and far.
2. "'A' band level" is the total sound level of all noise as measured with a sound level meter using the "A" weighing network. The unit measurement is the dB(A). "dB" is the abbreviation for the decibel. "dB(A)" is a weighted decibel which closely approximates the human ear response to sound.
3. "Bel" is the common logarithmic value of any sound intensity as related to the standard threshold of audibility (minimum detectable sound 10-12 watts per square meter).
4. "Cycle" is the complete sequence of value of a periodic quantity that occur during a period.
5. "Decibel" is one-tenth (1/10) of a bel as measured on the "A" scale of a standard sound meter.
6. "Emergency work" is work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger.
7. "Emergency vehicles" are those vehicles such as ambulance, fire, police, and other city vehicles operating in time of emergency.

8. "Frequency" of a function periodic in time is the reciprocal of the primitive period. The unit is the cycle per unit time and must be specified.
9. "Motor sports facility" is any facility, track, or course upon which racing events are conducted.
10. "Motor sports facility owner" is the owner or operator of a motor sports facility or an agent or designee of the owner or operator. When a racing event is held on public land, the event organizer (i.e., promoter) shall be considered the motor sports facility owner for the purpose of this article.
11. "Noise" is any sound which is unwanted and which causes or tends to cause an adverse psychological or physiological effect on human beings.
12. "Person" is a person, person's firm, association, co-partnership, joint venture, corporation, or any entity public or private in nature.
13. "Property boundary" is the imaginary line exterior to any enclosed structure, at the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another person.
14. "Sound-level meter" is an instrument including a microphone, an amplifier, an output meter, and frequency weighing networks for the measurement of noise and sound levels in a specified manner.

15-1402. UNNECESSARY NOISE PROHIBITED. It shall be unlawful for any person to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the City of West Fargo.

15-1403. UNLAWFUL NOISE - DETERMINATION. The standards that will be considered in determining whether a violation of Section 15-1402 exists shall include, but shall not be limited to, the following:

1. The volume of the noise.
2. The intensity of the noise.
3. Whether the nature of the noise is usual or unusual.
4. Whether the origin of the noise is natural or unnatural.
5. The volume and intensity of the background noise, if any.

15-1404. PROJECTION OF SOUND UNLAWFUL. It shall be unlawful to project a sound or noise, excluding noise emanating from a moving motor vehicle, from one (1) property into another within the boundary of a use district which exceeds the limiting noise criteria set forth in Table 1 below. Noise level will be measured at the property boundary or at any point within the property affected by the noise.

1. Sound or noise projecting from one (1) use district, into another district with a different noise level limit, shall not exceed the limits of the district into which the noise is projected.
2. The permissible levels in decibels set forth in Table 1 below shall be modified so that any noise occurring on property deemed to be nonconforming use property shall be determined upon the conforming zoning designation of the property.

TABLE 1. LIMITING NOISE LEVELS FOR ZONING DISTRICTS

	Zoning District			
	Residential	Public and Agricultural	Commercial	Industrial
	R-1A, R-1B, R-1, R-2, R-2A, R-3, R-3A, R-4	A, P, P-1	C-1, C-1A, C-2, C-2A, C-2B	M-1, M-1A M-2
Maximum number of decibels per- mitted from 6:30 a.m. to 10:00 p.m., daily	55	55	65	80
Maximum number of decibels per- mitted from 10:00 p.m. to 6:30 a.m. of the following day	50	50	60	75

15-1405. EXEMPTIONS. The following uses and activities shall be exempt from noise level regulations:

1. Noises of safety signals, warning devices, and emergency relief valves.
2. Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of emergency.

3. Noises resulting from emergency work as defined in Section 15-1401.6.
4. Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the City in accordance with Section 15-1406.
5. Any regulation of railroad noise will be subject to the following:

Title 40, Code of Federal Regulations, part 201:

1. 201.1 (c), (m), (p) , (t), (aa), (dd), (ee)
2. 201.10
3. 201.11 (a), (b)
4. 201.12 (a), (b)
5. 201.13
6. 201.22, 201.23, 201.24

15-1406. APPLICATION FOR SPECIAL PERMIT. Applications for a permit for relief from the noise level designated in this Section on the basis of undue hardship may be made to the City Administrator or his duly authorized representative. Any permit granted by the City Administrator hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The City Administrator, or his duly authorized representative, may grant the relief as applied for if he finds:

1. That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this Section; or
2. The activity, operation, or noise source will be of temporary duration, and cannot be done in a manner that would comply with other subsections of this Section; and
3. That no other reasonable alternative is available to the applicant; and
4. The City Administrator may prescribe any conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

15-1407. - MOTOR SPORTS FACILITIES.

1. No motor sports facility owner and no person owning or controlling a sports car racing vehicle, a drag racing vehicle, an oval course racing vehicle, a motorcycle racing vehicle, a snowmobile racing vehicle, or a modified competitive farm tractor shall cause or permit its

operation at any motor sports facility unless the vehicle is equipped with a properly installed and well maintained muffler or noise-disipative device and noise emissions from its operation do not exceed 105 db(A) at trackside or 105 db(A) at twenty (20) inches (five-tenths (.5) meters) from the exhaust outlet during the stationary measurement procedure.

2. No motor vehicle sports facility owner and no person owning or controlling a racing vehicle shall permit its use or operation at any time other than the following:
 - a. Sunday through Thursday during the hours of 8:00 a.m. through 10:00 pm; and,
 - b. Friday through Saturday, state and national holidays and the day preceding, not to exceed three (3) consecutive days, during the hours of 8:00 a.m. through 11:00 pm.

15-1408. ENFORCEMENT AND PENALTY. The City, or agents of the City, shall have authority to regulate and enforce the provisions stated herein concerning noise control. Any noise found to be in violation of this ordinance is hereby declared to be a public nuisance and may be abated, enjoined or repressed in the same manner as any other public nuisance, including restraining order or injunction issued by a court of competent jurisdiction. A violation of any of provision of this article shall constitute an infraction, punishable in accordance with § 1-0211. Each day a violation exists shall be deemed to be a separate offense. The remedy provided by this section shall not be deemed to be exclusive, and violations may be prosecuted in municipal court in the same manner as violations of other ordinances.

15-1409. SEVERABILITY. Should any part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be invalid.

TITLE XVI.

MOBILE HOME PARKS

CHAPTERS:

- 16-01. Definitions.
- 16-02. Permit.
- 16-03. License.
- 16-04. Inspection.
- 16-05. Notice, Hearings and Orders.
- 16-06. Exemptions.
- 16-07. Area: Streets and Sidewalks: Parking: Illumination Regulations.
- 16-08. Water Supply.
- 16-09. Sewage Disposal.
- 16-10. Electrical Distribution System.
- 16-11. Service Building and Other Community Service Facilities.
- 16-12. Refuse Handling.
- 16-13. Insect and Rodent Control.
- 16-14. Fuel Supply and Storage.
- 16-15. Fire Protection.
- 16-16. General Regulations: Penalty.

CHAPTER 16-01

DEFINITIONS

SECTIONS:

16-0101. Definitions.

16-0101. **DEFINITIONS.** As used in this title:

1. Driveway means a minor private way used by vehicles and pedestrians on mobile home lot or used common access to a small group of lots or facilities.
2. Health Authority means the State Department of Health or its authorized representative of the City.
3. License means a written license issued by the Health Authority allowing a person to operate and maintain a mobile home park under the provisions of this title and regulations issued hereunder.
4. Mobile Home means a manufactured transportable, single-family dwelling unit suitable for year-round occupancy and containing water supply, waste disposal and electrical convenience.
5. Mobile Home Lot means a parcel of land for the placement of a single mobile home for the exclusive use of its occupants.
6. Mobile Home Park means a contiguous parcel of land which has been developed for the placement of mobile homes and is owned by an individual, a firm, trust, partnership, public or private association or corporation.
7. Mobile Home Stand means that part of an individual lot which has been reserved for the placement of one mobile home unit.
8. Park Management means the person who owns or has charge, care or control of the mobile home park.
9. Park Street means a private way which affords principal means of access to individual mobile home lots or auxiliary buildings.
10. Permit means a written permit or certification issued by the City Commission permitting the construction, alteration and extension of a mobile home park under the

provisions of this title and regulations issued hereunder.

11. Person means any individual, firm, trust, partnership, public or private association or corporation.
12. Service Building means a structure housing toilet, lavatory and such other facilities as may be required by this title.
13. Sewer Connection means the connection consisting of all pipes, fittings and appurtenances from the drain outlet of the mobile home to the inlet of the corresponding sewer riser pipe of the sewerage system serving the mobile home park.
14. Sewer Riser Pipe means that portion of the sewer lateral which extends vertically to the ground elevation and terminates at each mobile home lot.
15. Water Connection means the connection consisting of all pipes, fittings and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within the mobile home.
16. Water Riser Pipe means that portion of the water supply system serving the mobile home park which extends vertically to the ground elevation and terminates at a designated point at each mobile home lot.

CHAPTER 16-02

PERMIT

SECTIONS:

- 16-0201. Permits Required.
- 16-0202. Application for Permit.
- 16-0203. Permit Fee.
- 16-0204. City Commission Issues Permit.
- 16-0205. Appeal.

16-0201. **PERMITS REQUIRED.** It shall be unlawful for any person to construct, alter or extend any mobile home park within the limits of West Fargo unless he holds a valid permit issued by the City Building Inspector in the name of such person for the specific construction, alteration or extension proposed.

16-0202. **APPLICATION FOR PERMIT.** All applications for permits shall contain the following:

1. Name and address of applicant.
2. Location and legal description of mobile home park.
3. Complete engineering plans and specifications of the proposed park showing but not limited to the following:
 - a. The area and dimensions of the tract of land.
 - b. The number, location and size of all mobile home lots.
 - c. The location and width of roadways and walkways.
 - d. The location of water and sewer lines and riser pipes.
 - e. Plans and specifications of the water supply and sewage.
 - f. Plans and specifications of all buildings constructed or to be constructed within the mobile home park.
 - g. The location and details of lighting and electrical systems.

16-0203. **PERMIT FEE.** All applications shall be accompanied by the deposit of a fee as called for in the title covering building permits.

16-0204. **CITY COMMISSION ISSUES PERMIT.** When, upon review of the application, the City Commission is satisfied that the proposed plan meets the requirements of this title, a permit shall be issued.

16-0205. **APPEAL.** Any person whose application for a permit under this title has been denied may request and shall be granted a hearing on the matter before the City Commission under the procedure provided by Chapter 16-05 of this title.

CHAPTER 16-03

LICENSE

SECTIONS:

- 16-0301. License Required.
- 16-0302. Requirements: Fee: Term.
- 16-0303. Transfer of License: Notice: Fee.
- 16-0304. Suspension of License.

16-0301. **LICENSE REQUIRED.** It shall be unlawful for any person to operate any mobile home park within the limits of West Fargo without first procuring a license from the City. Any person who seeks to obtain such a license shall execute under oath, and file with the City Auditor, a written application therefor on a form provided by the City Auditor setting forth the name, citizenship, police record, if any, and place of residence of the applicant, and the legal description of the premises for which the license is sought. The application must show the age of the applicant, and include the names of five (5) character witnesses, if an individual; the name, place of residence, citizenship and age of each partner, if the applicant is a partnership; if the applicant is a corporation, the applicant must show the name and address of each officer, together with the date of the charter.

16-0302. **REQUIREMENTS: FEE: TERM.** No license shall be issued unless the applicant holds a valid license issued by the State Health Department in the name of the person for the specific mobile home park. The City license shall be issued upon approval of the building permit, if such is a new mobile home park or an addition to an existing mobile home park, evidence of the State Health Department license, and payment of a Fifty Dollar (\$50) annual license fee. The term of the license shall be from July 1 to June 30 following. When the original license is approved, the applicant shall pay a fee pro-rated in accordance with the portion of the license year which has expired and the portion of the license year which remains to run.

16-0303. **TRANSFER OF LICENSE: NOTICE: FEE.** Every person holding a license shall give notice in writing to the City Commission within five (5) days after having disposed of interest in any mobile home park. Such notice shall include the name and address of the persons succeeding to the ownership of such mobile home park. Upon application in writing for transfer of the license and deposit of a fee of Twenty-five Dollars (\$25), the license shall be transferred if the mobile home park is in compliance with all applicable provisions of this title.

16-0304. **SUSPENSION OF LICENSE.** Whenever upon inspection of any mobile home park, the Building Inspector finds that conditions or practices exist which are in violation of any provision of this title, the Building Inspector shall give notice in writing in accordance with Section 16-0501 to the person to whom the license was issued that unless such conditions are corrected within a reasonable period of time, specified in the notice, the license shall be suspended. At the end of such period the Building Inspector shall reinspect such mobile home park and, if such conditions or practices have not been corrected, he shall suspend the license and give notice in writing of such suspension to the person to whom the license is issued. Upon receipt of notice of such suspension, such person shall cease operation of such mobile home park except as provided in Section 16-0502.

CHAPTER 16-04

INSPECTION

SECTIONS:

- 16-0401. Inspection by Building Inspector.
- 16-0402. Authority to Enter Premises.
- 16-0403. Authority to Inspect Register.
- 16-0404. Duty of Park Manager.
- 16-0405. Duty of Occupant.

16-0401. **INSPECTION BY BUILDING INSPECTOR.** The City Building Inspector is hereby authorized and directed to make such inspections as are necessary to determine satisfactory compliance with this title.

16-0402. **AUTHORITY TO ENTER PREMISES.** The Building Inspector shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this title.

16-0403. **AUTHORITY TO INSPECT REGISTER.** The City shall have the power to inspect the register containing a record of all residents of the mobile home park.

16-0404. **DUTY OF PARK MANAGER.** It shall be the duty of the park management to give the City free access to all lots at reasonable times for the purpose of inspection.

16-0405. **DUTY OF OCCUPANT.** It shall be the duty of every occupant of a mobile home park to give the owner thereof or his agent or employee access to any part of such mobile home park at a reasonable time for the purpose of making such repairs or alterations as are necessary to effect compliance with this title.

CHAPTER 16-05

NOTICE, HEARINGS AND ORDERS

SECTIONS:

- 16-0501. Notice of Violation.
- 16-0502. Hearing on Notice.
- 16-0503. Order of City Commission.
- 16-0504. Appeal.
- 16-0505. Emergency: Power of City Commission.

16-0501. **NOTICE OF VIOLATION.** Whenever the City determines that there are reasonable grounds to believe that there has been a violation of any provision of this title, the City shall give notice of such alleged violation to the person to whom the permit or license was issued, as hereinafter provided. Such notice shall:

1. Be in writing.
2. Include a statement of the reasons for its issuance.
3. Allow a reasonable time for the performance of any act it requires.
4. Be served upon the owner or his agent as the case may require. Provided: That such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to his last known address, or when he has been served with such notice by any method authorized or required by the laws of this State. Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this title.

16-0502. **HEARING ON NOTICE.** Any person affected by any notice which has been issued in connection with the enforcement of any provisions of this title, may request and shall be granted a hearing on the matter before the City Commission. Provided: That such person shall file in the office of the City Auditor a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten (10) days after the day the notice was served. The filing of the request for a hearing shall operate as a stay of the notice and of the suspension except in the case of an order issued under Section 16-0505. Upon receipt of such petition the City Commission shall set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than ten (10) days after

the day on which the petition was filed. Provided: That upon application of the petitioner the City Commission may postpone the date of the hearing for a reasonable time beyond such ten (10) day period when in his judgment the petitioner has submitted good and sufficient reasons for such postponement.

16-0503. **ORDER OF CITY COMMISSION.** After such hearing the City Commission shall make findings as to compliance with the provisions of this title and shall issue an order in writing sustaining, modifying or withdrawing the notice which shall be served as provided in Section 16-0501. Upon failure to comply with any order sustaining or modifying a notice, the license of the mobile home park affected by the order shall be revoked.

16-0504. **APPEAL.** The proceedings at such a hearing, including the findings and decisions of the City Commission and together with a copy of every notice and order related thereto shall be entered as a matter of public record in the office of the Health Authority but the transcript of the proceedings need not be transcribed unless judicial review of the decision is sought as provided by this section. Any person aggrieved by the decision of the City Commission may seek relief therefrom in any Court of competent jurisdiction as provided by the laws of this State.

16-0505. **EMERGENCY: POWER OF CITY COMMISSION.** Whenever the City Commission finds that an emergency exists which requires immediate action to protect the public health it may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as it may deem necessary to meet the emergency including the suspension of the permit or license. Notwithstanding any other provisions of this title, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but upon petition to the City Commission shall be afforded a hearing as soon as possible. The provisions of Section 16-0503 and 16-0504 shall be applicable to such hearing and the order issued thereafter.

CHAPTER 16-06

EXEMPTIONS

SECTIONS:

- 16-0601. Exemption: When Granted.
- 16-0602. How Long Exemption Allowed.
- 16-0603. Conformity.
- 16-0604. Additional Exemption.

16-0601. **EXEMPTION: WHEN GRANTED.** Where the City Commission finds that compliance with provisions of this title would result in undue hardship, an exemption may be granted by the City Commission without impairing the intent and purpose of this title. Deviations from design, construction and installation provisions shall be brought into compliance with this title within a reasonable period of time based on economic feasibility of improvement, nature, significance and extent of deviation, depreciation of material, improvement, and layout in use and other similar factors, within a minimum period not exceeding five (5) years and a maximum period not exceeding twenty-five (25) years.

16-0602. **HOW LONG EXEMPTION ALLOWED.** Such period shall begin after the City Commission has given notice of a certain and specific deviation from this title to the person to whom the permit or certification was issued.

16-0603. **CONFORMITY.** Gradual improvements to a higher degree of conformity shall be permissive provided that there shall be complete conformity at the end of a period prescribed by the City Commission.

16-0604. **ADDITIONAL EXEMPTION.** Those mobile home parks which are in existence on August 4, 1971, will not be forced to comply with this title, with the exception that any new additions, that result in the increase of the number of trailer spaces available, to the old park, must comply with this title.

CHAPTER 16-07

AREA: STREETS AND SIDEWALKS: PARKING: ILLUMINATION REGULATIONS

SECTIONS:

- 16-0701. Required Setbacks, Buffer Strips, Screening and Density.
- 16-0702. Park Street System and Car Parking.
- 16-0703. Walks.
- 16-0704. Mobile Home Stands.
- 16-0705. Traffic Regulations.

16-0701. **REQUIRED SETBACKS, BUFFER STRIPS, SCREENING AND DENSITY.**

1. All mobile homes shall be located at least twenty-five (25) feet from any park property boundary line abutting upon a public street or highway and at least fifteen (15) feet from other park property boundary lines.
2. There shall be a minimum distance of ten (10) feet between the mobile home stand and abutting park street.
3. All mobile home parks located adjacent to industrial or commercial land uses shall be provided with screening such as fences or natural growth along the property boundary line separating the park and such adjacent nonresidential uses.
4. No acre of land within any mobile home park shall contain more than seven (7) mobile home lots.

16-0702. **PARK STREET SYSTEM AND CAR PARKING.**

1. General Requirements. All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets and roads to each mobile home lot. Such access shall be provided by streets, driveways or other means.
2. Park Entrance. Entrances to mobile home parks shall be designated to minimize congestion and hazards and allow free movement of traffic on adjacent streets.
3. Internal Streets. Surfaced roadways shall be of adequate width to minimum requirements:

- a. All streets except minor streets..... 24 Feet
(From back of curb to back of curb)
 - b. Minor Streets..... 18 Feet
(Acceptable only if less than Five Hundred
(500) feet long and serving less than
Twenty-five (25) mobile homes or of any length
if mobile home lots abut one side only).
 - c. Dead End Streets shall be limited in length to
1,000 Feet and shall be provided at the closed end
with a turn around having an outside roadway
diameter of at least Sixty (60) feet.
4. Car Parking. Off-street parking area or off-street
parking lanes shall be provided for the use of park
occupants and guests. Such areas shall:
- a. Be furnished at a rate of at least 1.50 car space
for each mobile home lot.
 - b. Be located within a distance of Two Hundred (200)
feet from the mobile home to be served unless other
vehicular access is provided.

The minimum street width requirement under
Section 16-0702.3 shall be increased by seven (7) feet if
on-street parking is the only type of car parking
provided in a mobile home park.

5. Required Illumination of Park Street Systems. All parks
shall be furnished with lighting units so spaced and
equipped with luminaries placed at such mounting heights
as will provide the following average maintained levels
of illumination for the safe movement of pedestrians and
vehicles at night:
- a. All parts of the park street systems: 0.6 foot
candle, with a minimum of 0.1 foot candle.
 - b. Potentially hazardous locations, such as major
street intersections and steps or stepped ramps:
Individually illuminated, with a minimum of
0.3 foot candle.
6. Street Construction and Design Standards.
- a. Pavements. All streets shall be provided with a
smooth, hard and dense surface which shall be
durable and well drained under normal use and
weather conditions. Pavement edges shall be

protected to prevent raveling of the wearing surface and shifting of the pavement base. Street surfaces shall be maintained free of cracks, holes and other hazards.

- b. Grades. Grades of all streets shall be sufficient to insure adequate surface drainage.
- c. Intersections. Within one hundred (100) feet of an intersection, streets shall be at approximately right angles. A distance of at least one hundred fifty (150) feet shall be maintained between center lines of offset intersecting streets. Intersections of more than two (2) streets at one point shall be avoided.

16-0703. **WALKS.**

- 1. General Requirements. All parks shall be provided with safe, convenient all-season pedestrian access of adequate width for intended use, durable and convenient to maintain, between individual mobile homes, the park streets and all community facilities provided for park residents. Sudden changes in alignment and gradient shall be avoided.
- 2. Common Walk System. A common walk system shall be provided and maintained between locations where pedestrian traffic is concentrated. Such common walks shall have a minimum width of three and one-half (3½) feet.
- 3. Individual Walks. All mobile home stands shall be connected to common walks, to paved streets or to paved driveways or parking spaces connecting to a paved street. Such individual walks shall have a minimum width of two (2) feet.

16-0704. **MOBILE HOME STANDS.** The areas of the mobile home stand shall be improved to provide adequate support for the placement of the mobile home, thereby securing the superstructure against uplift, sliding, rotation and overturning. The mobile home shall not heave, shift or settle unevenly under the weight of the mobile home due to frost action, inadequate drainage, vibration or other forces acting on the structure.

16-0705. **TRAFFIC REGULATIONS.** The traffic regulations set out in Title XIII of the Revised Ordinances of the City of West Fargo shall be in full force and effect and enforced on the streets within a mobile home park, with the exception that the parking regulations of Title XIII shall not be applicable. The speed limit on streets within a mobile home park shall be as set by the City

Commission of the City of West Fargo. The City shall have the right to place speed limit signs, stop signs and other traffic signs as they deem appropriate. Such signs shall not be removed without the permission of the City of West Fargo.

CHAPTER 16-08

WATER SUPPLY

SECTIONS:

- 16-0801. Connection With City Mains: Meter.
- 16-0802. Source of Supply.
- 16-0803. Water Distribution.
- 16-0804. Approval of Plans.

16-0801. **CONNECTION WITH CITY MAINS: METER.** The water system shall be connected to the City's Main at a location approved by the City Water Department, and metered in a manner approved by the Water Department. The system shall comply in every way with the City and State Plumbing Codes.

16-0802. **SOURCE OF SUPPLY.** The water supply shall be capable of supplying a minimum of One Hundred Fifty (150) gallons per day per mobile home.

16-0803. **METER DISTRIBUTION.** An individual water connection consisting of a riser terminating in a valved outlet at least four (4) inches above the ground shall be provided at each mobile home stand. Water connections shall be located a safe distance from the sewer connections.

16-0804. **APPROVAL OF PLANS.** Complete plans and specifications shall be submitted to the State Health Department and the City Engineer for approval.

CHAPTER 16-09

SEWAGE DISPOSAL

SECTIONS:

- 16-0901. Requirements.
- 16-0902. Size of Service.
- 16-0903. Service Connection Standards.

16-0901. **REQUIREMENTS.** The entire sewage system shall be connected to the City Sewage System at a location approved by the City Engineer. The system shall comply in every way with the City and State Plumbing Codes.

16-0902. **SIZE OF SERVICE.** A minimum of four (4") inch service shall be provided to each mobile home stand and collection lines shall be approximately sized to handle the normal flow plus a safety factor of two and one-half (2½).

16-0903. **SERVICE CONNECTION STANDARDS.** Any surface sewage connection, including, but not limited to, mobile home drain connections, shall be of hubless cast iron soil pipe or schedule 40 PVC or ABS plastic pipe not less than four (4) inches in size and not less than three (3) inches inside diameter. Drain Connections shall be gas and water tight. Each service to any surface sewage connection, including, but not limited to, mobile home drain connections, not in use shall be equipped with a hubless sewer plug.

CHAPTER 16-10

ELECTRICAL DISTRIBUTION SYSTEM

SECTIONS:

- 16-1001. General Requirements.
- 16-1002. Power Distribution Lines.
- 16-1003. Individual Electrical Connections.
- 16-1004. Required Grounding.

16-1001. **GENERAL REQUIREMENTS.** Every park shall contain an electrical wiring system consisting of wiring, fixtures, equipment and appurtenances which shall be installed and maintained in accordance with applicable codes and regulations governing such systems.

16-1002. **POWER DISTRIBUTION LINES.**

1. Main power lines shall be located underground.
2. All direct conductors or cable shall be buried at least eighteen (18) inches below the ground surface and shall be insulated and specially designed for the purpose. Such conductors shall be located not less than one (1) foot radial distance from water, sewer, gas or communication lines.

16-1003. **INDIVIDUAL ELECTRICAL CONNECTIONS.**

1. Each mobile home lot shall be provided with an approved disconnecting device and over-current protective equipment. The minimum service per outlet shall be 120/124 volts AC, 50 amperes.
2. Outlets (receptacles or pressure connectors) shall be housed in a weatherproof outlet box, and shall be located not more than Twenty-five (25) feet from the over-current protective device in the mobile home. A Three-pole, four-wire grounding type shall be used.
3. Receptacles, if provided, shall be in accordance with American Standard Outlet Receptacle C-73.1.
4. Connectors, if not substituted by more than one (1) receptacle, shall be provided where the calculated load of the mobile home is more than fifty (50) amperes.

5. The mobile home shall be connected to the outlet box by an approved type of flexible supply cord with a male attachment plug or with pressure connectors.

16-1004. **REQUIRED GROUNDING.** All exposed non-current carrying metal parts of mobile homes and all other equipment shall be grounded by means of an approved grounding conductor with branch circuit conductors or other approved method or grounded metallic wiring. The neutral conductor shall not be used as an equipment ground for mobile homes or other equipment.

CHAPTER 16-11

SERVICE BUILDING AND OTHER COMMUNITY SERVICE FACILITIES

SECTIONS:

- 16-1101. General.
- 16-1102. Structural Requirements for Buildings.
- 16-1103. Barbecue Pits, Fireplaces, Stoves and Incinerators.

16-1101. **GENERAL.** The requirement of this chapter shall apply to service buildings, recreation buildings and other community service facilities such as:

- 1. Management offices, repair shops and storage areas;
- 2. Sanitary facilities;
- 3. Laundry facilities;
- 4. Indoor recreation areas;
- 5. Commercial uses supplying essential goods or services for the exclusive use of park occupants.

16-1102. **STRUCTURAL REQUIREMENTS FOR BUILDINGS.**

- 1. All portions of the structure shall be properly protected from damage by ordinary uses and by decay, corrosion, termites, and other destructive elements. Exterior portions shall be of such materials and be so constructed and protected as to prevent entrance or penetration of moisture and weather.
- 2. All rooms containing sanitary or laundry facilities shall:
 - a. Have sound resistant walls extending to the ceiling between male and female sanitary facilities. Walls and partitions around showers, bathtubs, lavatories, and other plumbing fixtures shall be constructed of dense, non-absorbent, waterproof material or covered with moisture resistant material.
 - b. Have at least one window or skylight facing directly to the outdoors. The minimum, aggregate gross area of windows for each required room shall be not less than ten percent (10%) of the floor area served by them.

- c. Have at least one (1) window which can be easily opened, or a mechanical device which will adequately ventilate the room.
- 3. Toilets shall be located in separate compartments equipped with self-closing doors. Shower stalls shall be of the individual type. The roofs shall be screened to prevent direct view of the interior when the exterior doors are open.
- 4. Illumination levels shall be maintained as follows: (a) general seeing tasks - five (5) footcandles; (b) laundry room work area - forty (40) footcandles; (c) toilet room, in front of mirrors - forty (40) footcandles.
- 5. Hot and cold water shall be furnished to every lavatory, sink, bathtub, shower and laundry fixture and cold water shall be furnished to every water closet and urinal.

16-1103. **BARBECUE PITS, FIREPLACES, STOVES AND INCINERATORS.** Cooking shelters, barbecue pits, fireplaces, wood-burning stoves and incinerators shall be so located, constructed, maintained and used as to minimize fire hazards and smoke nuisance both on property on which used and on neighboring property.

CHAPTER 16-12

REFUSE HANDLING

SECTIONS:

- 16-1201. General Regulations.
- 16-1202. Storage Containers.
- 16-1203. Container Stands.
- 16-1204. Collection.

16-1201. **GENERAL REGULATIONS.** The storage, collection and disposal of refuse in the mobile home park shall be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accident of fire hazards or air pollution.

16-1202. **STORAGE CONTAINERS.** All refuse shall be stored in fly-tight, watertight, rodent-proof containers, which shall be located not more than One Hundred Fifty (150) feet from any mobile home lot. Containers shall be provided in sufficient number and capacity to properly store all refuse.

16-1203. **CONTAINER STANDS.** Refuse collection stands shall be provided for all refuse containers. Such container stands shall be so designed as to prevent containers from being tipped to minimize spillage and container deterioration and to facilitate cleaning around them.

16-1204. **COLLECTION.** All refuse containing garbage shall be collected at least weekly. Where suitable collection service is not available from municipal or private agencies, the mobile home park operator shall provide this service. All refuse shall be collected and transported in covered vehicles or covered containers.

CHAPTER 16-13

INSECT AND RODENT CONTROL

SECTIONS:

- 16-1301. Grounds, Buildings and Structure Regulation.
- 16-1302. Accumulation of Debris Prohibited.
- 16-1303. Storage Area: Regulation.
- 16-1304. Screening Required.
- 16-1305. Weeds: Regulation.

16-1301. **GROUND, BUILDINGS AND STRUCTURE REGULATION.** Grounds, buildings and structures shall be maintained free of insect and rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall conform with the requirements of the City.

16-1302. **ACCUMULATION OF DEBRIS PROHIBITED.** Parks shall be maintained free of accumulations of debris which may provide rodent harborage or breeding places for flies, mosquitoes and other pests.

16-1303. **STORAGE AREA: REGULATION.** Storage areas shall be so maintained as to prevent rodent harborage; lumber, pipe and other building material shall be stored at least one (1) foot above the ground.

16-1304. **SCREENING REQUIRED.** Where the potential for insect and rodent infestation exists, all exterior openings in or beneath any structure shall be appropriately screened with wire mesh or other suitable materials.

16-1305. **WEEDS: REGULATION.** The growth of brush, weeds and grass shall be controlled to prevent harborage of ticks, chiggers and other noxious insects. Parks shall be so maintained as to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health. Open areas shall be maintained free of heavy undergrowth of any description.

CHAPTER 16-14

FUEL SUPPLY AND STORAGE

SECTIONS:

- 16-1401. Natural Gas System.
- 16-1402. Liquified Petroleum Gas System.
- 16-1403. Fuel Oil Supply.

16-1401. **NATURAL GAS SYSTEM.** The natural gas system shall be installed in accordance with the State and City codes for Natural Gas Systems.

16-1402. **LIQUIFIED PETROLEUM GAS SYSTEM.** All L.P. Gas Systems shall be installed as centralized system. Individual gas tanks will not be allowed. L.P. must be installed with a centralized tank and underground distribution system.

All L.P. gas systems shall be installed in accordance with State and City codes.

16-1403. **FUEL OIL SUPPLY.** All fuel oil supply systems shall be installed as a centralized system. Individual fuel oil tanks will not be allowed. Oil must be installed with a centralized oil tank and underground distribution lines. All fuel oil supply systems shall be installed and maintained in accordance with the State and City codes.

CHAPTER 16-15

FIRE PROTECTION

SECTIONS:

- 16-1501. General Regulations.
- 16-1502. Fire Extinguishers.
- 16-1503. Fire Hydrants.

16-1501. **GENERAL REGULATIONS.** Mobile home parks shall be kept free of litter, rubbish and other flammable materials.

16-1502. **FIRE EXTINGUISHERS.** Portable fire extinguishers rated for classes B and C fires shall be kept in service buildings and at other locations conveniently and readily accessible for use by all occupants and shall be maintained in good operating condition. Their capacity shall not be less than two and one-half (2½) pounds.

16-1503. **FIRE HYDRANTS.**

1. Fire hydrants shall be installed in the park water supply system in accordance, with the following requirements:
 - a. The water supply system shall permit the operation of a minimum of two (2), one and one-half (1½) inch hose streams.
 - b. Each of two (2) nozzles, held four (4) feet above the ground, shall deliver at least two hundred fifty (250) gallons of water per minute at a flowing pressure of at least thirty (30) pounds per square inch at the highest elevation point of the park.
2. Fire hydrants shall be located within Five Hundred (500) feet of any mobile home, service building or other structure in the park.

CHAPTER 16-16

GENERAL REGULATIONS: PENALTY

SECTIONS:

- 16-1601. Responsibilities of the Park Management.
- 16-1602. Responsibilities of Park Occupants.
- 16-1603. Conflicting Ordinances: Standard Adopted.

16-1601. **RESPONSIBILITIES OF THE PARK MANAGEMENT.**

1. The person to whom a license for a mobile home park is issued shall operate the park in compliance with this title and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.
2. The park management shall notify park occupants of all applicable provisions of this title and inform them of their duties and responsibilities under this title.
3. The park management shall supervise the placement of each mobile home on its mobile home stand which includes securing its stability and installing all utility connections.
4. The park management shall maintain a register containing the names of all park occupants identified by lot number or street address. Such register shall be available to any authorized person inspecting the park.
5. The park management shall notify the Health Authority immediately of any suspected communicable or contagious disease within the park.

16-1602. **RESPONSIBILITIES OF PARK OCCUPANTS.**

1. The park occupant shall comply with all applicable requirements of this title and shall maintain his mobile home lot, its facilities and equipment in good repair and in a clean and sanitary condition.
2. The park occupant shall be responsible for proper placement of his mobile home on its mobile home stand and proper installation of all utility connections in accordance with the instructions of the park management.

3. Pets, if permitted in the park, shall be prohibited to run at large or to commit any nuisance within the limits of any mobile home lot.
4. Skirtings, porches, awnings and other additions shall be installed only if permitted and approved by the park management. Where installed they shall be maintained in good repair. The space immediately underneath a mobile home shall be used for storage only if permitted by the park management. If permitted, the following conditions shall be satisfied:
 - a. The storage area shall be provided with a base of impervious material.
 - b. Stored items shall be located so as not to interfere with the underneath inspection of the mobile home.
 - c. The storage area shall be enclosed by skirting.
5. The park occupant shall store and dispose of all his rubbish and garbage in a clean, sanitary and safe manner. The garbage container shall be rodent-proof, insect-proof and watertight.
6. First aid fire extinguishers for Class B and C fires shall be kept at the premises and maintained in working condition.

16-1603. **CONFLICTING ORDINANCES: STANDARD ADOPTED.** In any case where a provision of this title is found to be in conflict with a provision of any other ordinance or code of the City of West Fargo adopted and enacted concurrently herewith, the provision which, in the judgment of the City establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail. In any case where a provision of this title is found to be in conflict with a provision of any other ordinance or code of the City of West Fargo adopted and enacted concurrently herewith, which establishes a lower standard for the promotion and protection of the health and safety of the people, the provisions of this title shall be deemed to prevail, and such other ordinances or codes are hereby declared to be repealed to the extent that they may be found in conflict with this title.